

UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA

BEFORE THE HONORABLE PAUL A. MAGNUSON  
UNITED STATES DISTRICT COURT SENIOR JUDGE

**(JURY TRIAL PROCEEDINGS - VOLUME XX)**

25           Proceedings recorded by mechanical stenography;  
transcript produced by computer.

APPEARANCES:

For Plaintiff: UNITED STATES ATTORNEY'S OFFICE  
BY: ALLEN A. SLAUGHTER, JR.  
LEEANN K. BELL  
MANDA M. SERTICH  
300 South 4th Street, #600  
Minneapolis, MN 55415

DEPARTMENT OF JUSTICE  
CIVIL RIGHTS DIVISION  
BY: SAMANTHA TREPEL  
150 M Street NE  
Washington, D.C. 20530

For Defendant ROBERT M. PAULE, PA  
Tou Thao: BY: ROBERT M. PAULE  
920 2nd Avenue South, #975  
Minneapolis, MN 55402

PAULE LAW PLLC  
BY: NATALIE PAULE  
5100 West 36th Street  
P.O. Box 16589  
Minneapolis, MN 55416

For Defendant                   EARL GRAY DEFENSE  
Thomas Kiernan Lane:       BY: EARL P. GRAY  
                                  332 Minnesota Street, #W1610  
                                  St Paul, MN 55101

Court Reporter: RENEE A. ROGGE, RMR-CRR  
United States District Courthouse  
300 South 4th Street, Box 1005  
Minneapolis, MN 55415

	<u>I N D E X</u>	<u>PAGE</u>
1		
2	CLOSING ARGUMENT BY MS. SERTICH	3966
3	CLOSING ARGUMENT BY MR. ROBERT PAULE	4034
4	CLOSING ARGUMENT BY MR. PLUNKETT	4079
5	CLOSING ARGUMENT BY MR. GRAY	4102
6	REBUTTAL CLOSING ARGUMENT BY MS. BELL	4128
7		
8		
9		
10		
11		
12		
13		
14		
15		
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		

## PROCEEDINGS

**IN OPEN COURT**

(JURY PRESENT)

(Defendants present)

THE COURT: You may be seated. Good morning,  
everyone, and welcome back.

Please be advised that your colleague, Juror No. 52, has been excused from further service with respect to this case.

10 I'm going to ask that, first of all, Juror No. 60,  
11 if you would slide to the far end over there, I'd appreciate  
12 it. Thank you. We had a little conversation just as she  
13 was coming in about being alone in the front row.

14                   And then with that, Juror Number 70 -- let's see.  
15       I need to check. 69. Okay. Juror No. 69, if you would  
16       take the next seat over there.

17 | Juror No. 70, if you'd take the first seat there.

18 And then the two of you back in the amen corner,  
19 if you want to come up a row, why, you are welcome to do so.

Okay. And incidentally, members of the jury,  
please don't speculate or worry about why Juror No. 52 is  
just not with us. It was a matter that it was appropriate  
that she be excused from further service.

24 And with that, we've heard all the testimony we're  
25 going to hear in the case and we are now prepared for

1 summation.

2 I will recognize the government for summation.

3 Ms. Sertich.

4 MS. SERTICH: May it please the court --

5 THE COURT: Proceed.

6 MS. SERTICH: -- counsel, members of the jury.

7 In their custody. In their care. "Please, the  
8 knee on my neck." "I'm through." "I can't breathe,  
9 officer." "Please, man, somebody help me." "I can't  
10 breathe." "They're going to kill me." "They will kill me."  
11 "I can't breathe." And then one last time, "Please, I  
12 really can't breathe."

13 By the time George Floyd gasped out his final  
14 words on May 25th, 2020, Officer Chauvin had already been  
15 kneeling on him, pressing his knee into Mr. Floyd's neck for  
16 four minutes and 40 seconds. Make no mistake, this is a  
17 crime.

18 By that time Defendant Thao had stood just a few  
19 feet away for four minutes and 40 seconds staring right at  
20 Officer Chauvin as he slowly pressed the air out of the  
21 handcuffed and compliant man lying facedown on the ground  
22 begging for his life.

23 By that time Defendant Thao had ignored Mr. Floyd,  
24 who said 23 times while restrained on the ground, "I can't  
25 breathe," begging, "Please," 16 times.

1                   By that time Defendant Thao had also ignored the  
2                   pleas of a 61-year-old man in -- a 61-year-old man, a man in  
3                   his 30s, two teenage girls, and a 9-year-old girl, all of  
4                   who could see the obvious, that a man was dying right before  
5                   their eyes.

6                   By the time George Floyd spoke his last words,  
7                   Defendant Thao had done nothing for four minutes and  
8                   40 seconds. Actually, that's not quite true. He had done  
9                   nothing to stop the crime happening in front of him, but he  
10                  hadn't actually done nothing. He had chosen to argue with  
11                  and mock the people who were begging him to intervene.  
12                  "This is why you don't do drugs, kids." And "He's talking,  
13                  so he's fine."

14                  He had decided that, rather than tapping Chauvin  
15                  on the shoulder or shoving him off of George Floyd or even  
16                  just telling him, "That's enough, I got this," he would  
17                  argue with and belittle the people who were trying to get  
18                  him to do what the law, not to mention human decency and  
19                  common sense, required him to do, to stop the slow-motion  
20                  killing unfolding right in front of him.

21                  We know Thao recognized something was wrong  
22                  because he upped the EMS call to a Code 3, but then never  
23                  told dispatch the important information that could have sent  
24                  fire rescue to the scene in two minutes, that there was a  
25                  person having trouble breathing. He never did update that

1 information. None of the officers did.

2 That was Defendant Thao. By the time George Floyd  
3 said his final words, Defendant Kueng had been crouching  
4 shoulder to shoulder with Officer Chauvin for those same  
5 four minutes and 40 seconds.

6 By that time Defendant Kueng had also ignored all  
7 of those pleas. He had also chosen not to tap Officer  
8 Chauvin on the shoulder or ask him to move off of George  
9 Floyd's neck. But he, too, had not actually done nothing.  
10 Nothing would have been bad enough.

11 Defendant Kueng had spent that time pressing  
12 George Floyd's handcuffed wrist into his lower back while  
13 Officer Chauvin pulled the fingers of that same hand right  
14 in front of Kueng.

15 Defendant Kueng pressed George Floyd further into  
16 the pavement and made it that much harder for Mr. Floyd to  
17 reposition himself or to draw enough air into his lungs.  
18 Kueng held that position for more than eight minutes.

19 And as the terrified bystanders begged and  
20 pleaded, cried out repeatedly for any one of the defendants  
21 to do something, anything, Defendant Kueng instead casually  
22 picked gravel out of the tire in front of him and laughed  
23 with Officer Chauvin, who mocked --

24 MR. PLUNKETT: Misstates the evidence.

25 MS. SERTICH: -- George Floyd's pleas by saying it

1 took George Floyd --

2 THE COURT: This is final argument. Overruled.

3 Go ahead.

4 MS. SERTICH: -- mocked George Floyd's pleas by  
5 saying that it took George Floyd a heck of a lot of oxygen  
6 to keep talking. As he told you, a little moment of levity  
7 as his actions literally pressed the remaining oxygen out of  
8 George Floyd's body and carbon dioxide caused George Floyd's  
9 organs to fail.

10 And how about Defendant Lane? By that moment,  
11 when George Floyd said his final words, Defendant Lane had  
12 also pushed George Floyd's legs down, on and off, but even  
13 up to five minutes into the restraint and crouched just feet  
14 away from Officer Chauvin, choosing not to stop the horror  
15 unfolding right under his nose.

16 And you know that he affirmatively chose not to do  
17 anything because you know, based on what he said out loud  
18 and based on his training, what was going on in his head at  
19 that moment. He was thinking that George Floyd was in  
20 distress, maybe he had excited delirium, and that if they  
21 didn't roll George Floyd over onto his side, he could die.  
22 You know what was going through his head because he said  
23 bits and pieces of what he was thinking out loud. "Roll him  
24 on his side." "I just worry about the excited delirium."

25 But even though he recognized and even gave voice

1 to the mortal danger George Floyd was in, he did nothing to  
2 give Mr. Floyd the medical aid he knew Mr. Floyd so  
3 desperately needed, medical care that he had the ability,  
4 the authority, and the legal obligation to provide.

5 And then even at that point, when George Floyd  
6 forced out his final words, the defendants were still only  
7 halfway through their crime. Even after the moment when  
8 George Floyd moaned, "Please, I really can't breathe," these  
9 three defendants stood by and watched their fellow officer  
10 press the life out of him for another full minute and then  
11 another and then another and then another, for another  
12 nearly five minutes.

13 They sat by and chose to do nothing while George  
14 Floyd stopped moving, lost consciousness. They plainly knew  
15 of Mr. Floyd's worsening condition, not only from their  
16 front row seats on top of and right next to Mr. Floyd, but  
17 also from the frustrated calls of the witnesses.

18 Defendant Lane continued to voice a concern,  
19 agreeing with Bystander Alyssa Funari that George Floyd was  
20 passing out and asked again, "Should we roll him on his  
21 side?" and asked Defendant Kueng if he could find a pulse.

22 Defendant Kueng, still pressing George Floyd's  
23 wrist into his back and holding George Floyd's buttocks and  
24 legs down with his knee, checked for George Floyd's pulse  
25 twice and said twice that he couldn't find one.

1                   As you heard from emergency room physician  
2                   Dr. Bebarta, if you don't think you have a pulse, you assume  
3                   you don't have a pulse. He said if they don't have a pulse  
4                   and they're not moving or not breathing, they are probably  
5                   pulseless. It's a medical emergency.

6                   Thao himself testified that at that point every  
7                   second counts and that even a minute of delay can diminish  
8                   the likelihood of survival.

9                   In response to this obvious emergency, Defendant  
10                  Thao stood there and stared directly at George Floyd's  
11                  increasingly lifeless body for another two full minutes  
12                  after Mr. Floyd stopped speaking.

13                  He then -- watch the videos; you will see this for  
14                  yourselves, particularly Darnella Frazier's video,  
15                  Exhibit 17, and Genevieve Hansen's video, Exhibit 19 -- he  
16                  then stood in the way of the bystanders' view of what was  
17                  happening to George Floyd, blocking their ability to provide  
18                  aid or see what was happening to him. He taunted them and  
19                  ignored them when they addressed him by name and asked him  
20                  to give George Floyd aid or get his fellow officers to do  
21                  so.

22                  But, as we've heard so often throughout this  
23                  trial, Kueng and Lane were new officers. To those who have  
24                  suggested that it is just too much to expect of junior  
25                  officers that they stand up to Chauvin and suggest to him

1       that he stop killing a man right in front of them, I have  
2       this to say: Charles McMillian, Alyssa Funari, Genevieve  
3       Hansen, Donald Williams, Darnella Frazier, and her  
4       nine-year-old cousin.

5                  What the defense has suggested to you throughout  
6       this trial is that it is just too much to expect a trained  
7       officer with nine years experience under his belt and two  
8       officers who just went through a year and a half of  
9       training, one of whom had previous law enforcement  
10      experience, to so much as say to Officer Chauvin, "Hey, man,  
11      get your knee off his neck" or "That's enough, let up," or  
12      even, "Sir, check the carotid pulse."

13                 The defense wants you to accept that it is too  
14      much to ask of them to say those things because in Thao's  
15      case the defense position is it wasn't his job. You have  
16      heard law enforcement witness after witness reject that  
17      idea. It is every officer's job on scene. They want you to  
18      accept that in Kueng and Lane's case, it's too much to  
19      expect them to do their duty and risk the disapproval of a  
20      more experienced officer.

21                 Let me be clear about this. You do not have to  
22      accept Kueng 's assertion that he believed Chauvin could  
23      fire him. Two other MPD officers have testified that field  
24      training officers, let alone field training officers who are  
25      no longer supervising a trainee, cannot unilaterally fire

1 officers.

2                 But even if you credit his concern, let's be clear  
3 about what this means. The defense's position is that it is  
4 just too much to expect police officers to do their duty and  
5 attempt to aid a man they placed in their custody when it  
6 means risking the disapproval of a fellow officer, even when  
7 the result is that someone dies. That is what the position  
8 boils down to, and MPD policy and common sense will tell you  
9 to reject that.

10               They want you to accept that it is too much to ask  
11 of them to say those things, even though it was not too much  
12 for those regular people walking by, who saw exactly what  
13 was happening, who recognized the direness of the situation  
14 and who asked, then pleaded, then begged, then demanded that  
15 the defendants do something, anything, to save George  
16 Floyd's life.

17               Those civilians didn't have a badge. They didn't  
18 have other officers who could back them up. Each civilian  
19 knew when they stepped forward to question the police and  
20 particularly when Defendant Thao gruffly ordered them not to  
21 get involved, they knew these officers they were watching  
22 had more power than they did, more authority than they did,  
23 and could cause trouble for them.

24               But they still insisted, even though they, unlike  
25 the defendants, had no affirmative duty to help George

1 Floyd; even though they, unlike the defendants, had never  
2 sworn to keep the public safe; even though they, unlike the  
3 defendants, were not trained as to exactly how to respond to  
4 a situation like this; even though they, unlike the  
5 defendants, were being ordered away from George Floyd; even  
6 though they, unlike the defendants, were threatened with  
7 Mace; even though they had no power --

8 MR. GRAY: Judge, I object to this. Threatened by  
9 the defendants with Mace. My client didn't. She should  
10 particularize the defendants.

11 THE COURT: Sustained.

12 MR. GRAY: Move that the jury be told to disregard  
13 that.

14 THE COURT: Disregard it.

15 MS. SERTICH: Even though they had no power, no  
16 authority, no obligation, they knew they had to do  
17 something.

18 Darnella Frazier's little cousin was born right  
19 around the time Thao took his oath and became a police  
20 officer.

21 MR. ROBERT PAULE: Your Honor, I'd object to this.  
22 She is using a nontestifying witness to testify and drawing  
23 on the jury's emotion by consistently referring to a  
24 nine-year-old child.

25 THE COURT: Sustained.

1 MS. SERTICH: May I refer to her statements on the  
2 video, Your Honor, the evidence on the record?

3 MR. ROBERT PAULE: Your Honor, I would ask that  
4 that last portion of Ms. Sertich's argument be stricken as  
5 improper.

6 THE COURT: Yeah, counsel, I just don't think that  
7 the reference to that individual is appropriate or we don't  
8 need that in the argument.

9 MS. SERTICH: Not her statements in the video?

10 THE COURT: That's right.

11 MS. SERTICH: Instead, other than Lane asking a  
12 few questions, questions that show he knew there was a  
13 serious problem, these defendants did nothing to stop or  
14 attempt to stop Derek Chauvin and none of them did a thing  
15 to help George Floyd until after the ambulance arrived and  
16 Mr. Floyd had been in cardiac arrest for more than five  
17 minutes.

18 What the bystanders didn't know, but what you have  
19 seen and heard, is that the officers were actually listening  
20 to them, that as soon as Alyssa Funari said she thought  
21 George Floyd was passing out, Defendant Lane said, "Yeah, I  
22 think he's passing out," that when Genevieve Hansen and  
23 Donald Williams demanded the officers take George Floyd's  
24 pulse, Defendant Kueng immediately checked for a pulse and  
25 told Chauvin and Lane he couldn't find one.

1                   What the bystanders could never have imagined, of  
2 course, is that the officers knew this, knew Mr. Floyd had  
3 passed out, couldn't find Mr. Floyd's pulse, and would  
4 choose to do nothing about it.

5                   As a result of the officers' actions and inaction,  
6 exactly what the bystanders warned them about happened, a  
7 human being, someone's son, father, friend, significant  
8 other, George Perry Floyd, Jr. --

9                   MR. ROBERT PAULE: Your Honor, I'd object to this.  
10 There's been no evidence elicited as to any of those things  
11 that Ms. Sertich just said. She's also appealing to the  
12 jurors' prejudice by using the phrase "say his name."  
13 Totally inappropriate.

14                   MS. SERTICH: Your Honor, there's evidence in the  
15 record of him calling out to these people that I mentioned  
16 while he's on the ground on the video that is admitted as  
17 evidence.

18                   MR. ROBERT PAULE: Your Honor, that is not  
19 accurate. It misstates the evidence.

20                   THE COURT: The jury will recall the evidence that  
21 was given with respect to Mr. Floyd's comments, and I think  
22 that will end that matter.

23                   Continue.

24                   MS. SERTICH: As a result of this action and  
25 inaction, George Perry Floyd Jr. died a slow and tortuous

1 death over the course of nine minutes right there in front  
2 of these defendants, underneath their knees, handcuffed,  
3 unarmed, unresisting in broad daylight on a public street.

4 Now, as you heard from Judge Magnuson about a  
5 month ago now, the indictment in this case contains two  
6 counts, both of which charge deprivation of rights under  
7 color of law in a slightly different way.

8 Defendants Thao and Kueng are charged in Count 2  
9 with depriving Mr. Floyd's rights by failing to intervene to  
10 stop Mr. Chauvin's use of unreasonable force. And all three  
11 defendants, Thao, Kueng, and Lane, are charged in Count 3  
12 with depriving Mr. Floyd's rights through deliberate  
13 indifference to his medical needs, which means that they  
14 purposefully failed to provide medical aid to Mr. Floyd  
15 while he was in their custody and care.

16 I'm going to go through the law of both counts  
17 with you now and summarize the evidence that proves beyond a  
18 reasonable doubt, and then some, that these defendants are  
19 guilty.

20 I'll put this law up on the screen for you now as  
21 we go through, but you will see these same instructions from  
22 Judge Magnuson. You will get a copy of the instructions to  
23 use during your deliberations. You will be able to go back  
24 to them and read them yourselves.

25 For Count 2, failure to intervene, there are four

1 elements, four things the government must prove beyond a  
2 reasonable doubt:

3 First, that the defendants deprived George Floyd  
4 of a right, privilege, or immunity secured by the  
5 Constitution or laws of the United States by failing to  
6 intervene to stop Chauvin from using unreasonable force.

7 Second, that the defendants acted willfully, that  
8 is, the defendants committed such act with a bad purpose or  
9 improper motive to disobey or disregard the law,  
10 specifically intending to deprive the person of that right.

11 The third element of Count 2 that the government  
12 must prove is that the defendants acted under color of law,  
13 meaning that at the time of the offense the defendants were  
14 acting in their official capacity, in this case as officers  
15 with the Minneapolis Police Department.

16 And fourth and finally, the government must prove  
17 that bodily injury and/or death was a result of the  
18 defendants' conduct.

19 I'm going to go through each of these four  
20 elements with you, and I'm actually just going to take them  
21 slightly out of order to knock out the easiest one first and  
22 that's element three, that the defendants were acting under  
23 color of law, acting in their official capacity at the time  
24 of the crime.

25 This element is not in dispute. The parties have

1 stipulated to this fact. You heard my colleague, Ms. Bell,  
2 read that stipulation into the record, and it is  
3 Government's Exhibit 105.

4 And, of course, you saw that all the defendants  
5 were in uniform and working as Minneapolis Police Department  
6 officers that day. Mr. Floyd recognized that, calling Kueng  
7 and Lane "Mr. Officer" more than 30 times during their  
8 interaction.

9 The first element -- or the third element, the  
10 first we're talking about, is met. We can check that one  
11 off. This element is the same for Count 3. We'll talk  
12 about that later.

13 So then we can go back to the first element of  
14 Count 2, where you must determine whether the defendants  
15 deprived George Floyd of a constitutional right by failing  
16 to intervene.

17 Judge Magnuson will tell you that every person in  
18 the United States has the right to be free from an officer  
19 using unreasonable force against him. And crucially for  
20 this case, this right is violated not only by an officer who  
21 personally uses unreasonable force, but also by any officer  
22 who has knowledge of another officer's unreasonable force,  
23 has the opportunity to intervene to stop it, and chooses not  
24 to do that. This element actually has four subelements to  
25 prove, so I'm going to walk through each one to demonstrate

1 that the government has proven this element.

2 So the first part of this determination that you  
3 see there next to the letter "A" is whether Officer Chauvin  
4 used unreasonable force. That factor wasn't seriously  
5 questioned in this trial, so I won't spend much time on it.

6 You've learned that Officer Chauvin, like any  
7 other officer, was permitted to use only that amount of  
8 force that was reasonably necessary to control his arrestee.

9 Everyone who testified on this point, Inspector  
10 and former commander of training Katie Blackwell, medical  
11 support coordinator Officer Nicole Mackenzie, expert witness  
12 Chief Timothy Longo, even defense expert Steve Ijames agreed  
13 that there was a period of time while Mr. Floyd was still  
14 conscious that Officer Chauvin's force was unreasonable and  
15 that it continued until after the ambulance arrived.

16 According to defense expert Steve Ijames, it was  
17 obvious beyond question. He had never seen anything like it  
18 in any department, and George Floyd was killed as a result  
19 of this unreasonable use of force.

20 The first part of this constitutional violation  
21 has been proven beyond a reasonable doubt.

22 The second part of the constitutional violation --  
23 that's "B" on the screen -- requires the government to prove  
24 that Defendants Thao and Kueng observed or otherwise knew  
25 that Chauvin was using unreasonable force. The answer to

1           this question is yes as to both defendants.

2           In terms of observing the force, we've already  
3           discussed the front row seats that Defendants Thao and Kueng  
4           had to Chauvin's obviously unreasonable force.

5           When Thao was on the stand, the defense played  
6           only parts of his body-worn camera footage, up until about  
7           8:21 p.m. and then they skipped ahead until about 8:26 p.m.,  
8           avoiding more than five minutes. You will have the video  
9           showing these missing minutes, the video we watched over a  
10          month ago now, as well as all the video --

11           MR. ROBERT PAULE: Your Honor, I'd object to that  
12          last comment as burden shifting and improper.

13           THE COURT: Oh, I'll overrule. It was over a  
14          month ago. Go ahead.

15           MS. SERTICH: -- as well as all the video admitted  
16          as exhibits in this trial. They'll all be available to you  
17          in the deliberation room. Review the videos as much and as  
18          often as you need to do, because they show and tell what  
19          happened better than any testimony.

20           Review Defendant Thao's body-worn camera video,  
21          Exhibit 9; review the video recorded by Darnella Frazier,  
22          Exhibit 17; the Milestone video from across the street,  
23          Exhibit 14. Watch how for six whole minutes Thao stands  
24          right there next to his partners staring at Chauvin while  
25          he --

1                   MR. ROBERT PAULE: I'd object to this as  
2 misstating the evidence.

3                   THE COURT: It's overruled.

4                   MS. SERTICH: He's staring at Chauvin while he  
5 presses on George Floyd with his knees. During that time  
6 Thao stood staring at Chauvin while Chauvin pressed his left  
7 knee into Mr. Floyd's neck and Mr. Floyd said he couldn't  
8 breathe because of the knee on his neck and then stopped  
9 speaking, stopped moving, and lost consciousness.

10                  Two and a half minutes into the restraint Thao  
11 questioned Mr. Floyd directly. "What are you on?" George  
12 Floyd responded, "I can't breathe. Please, a knee on my  
13 neck." Charles McMillian told Mr. Floyd right then to get  
14 up and get in the car. Mr. Floyd responded, "I will. I  
15 can't move."

16                  Over six minutes into the restraint, Thao stepped  
17 forward and faced the bystanders and from then up until the  
18 time the EMS arrived this group of concerned citizens  
19 provided Thao and Kueng with play-by-play commentary on what  
20 Officer Chauvin was doing to George Floyd. They said:  
21 "You're stopping his breathing." "Look at him." "Get off  
22 of him." "He cannot breathe." "He's not responsive right  
23 now." "Is he breathing right now?" "You call what he's  
24 doing okay?" "He's not moving." "He has not moved not one  
25 time." "Did they just kill him?" "Check his pulse."

1 "Check the pulse." "Do they have a pulse?"

2                   Eight minutes into the restraint Alyssa Funari  
3 cries, "You're still on him." And then "You stand by your  
4 coworkers, right?" Those are your partners, right?" At  
5 about the same time Donald Williams tells Chauvin to get off  
6 of --

7                   MR. ROBERT PAULE: Objection. This violates the  
8 confrontation clause as Mr. Williams did not testify. It's  
9 being offered for the truth of the matter asserted and is  
10 improper.

11                  THE COURT: That I sustain. He did not testify.

12                  MS. SERTICH: Your Honor, I'm just repeating his  
13 words that are in evidence on the video.

14                  MR. ROBERT PAULE: Your Honor --

15                  THE COURT: It's overruled.

16                  MR. ROBERT PAULE: Your Honor, I would ask that  
17 the jury be instructed to disregard Ms. Sertich's last  
18 statement.

19                  THE COURT: I sustain that objection. The jury  
20 will disregard.

21                  MS. SERTICH: Thao, throughout this latter part of  
22 the restraint, and you can go back and listen to Donald  
23 Williams' words on those videos --

24                  MR. ROBERT PAULE: Your Honor, I object. This is  
25 a repeated objection. It's totally inappropriate and it's

1       intentional, given the fact it was just repeated after the  
2       court ordered her to not do that.

3                     MS. SERTICH: It goes to Mr. Thao's knowledge,  
4                     Your Honor, not to the truth of the matter.

5                     THE COURT: Okay. Proceed.

6                     MS. SERTICH: Thao, throughout this latter part of  
7       the restraint, heard them loud and clear. He responded with  
8       taunts and tried to hide the situation from their view.

9                     During this time Kueng was shoulder to shoulder  
10      with Chauvin and had a close-up view of Chauvin's knee on  
11      Mr. Floyd's neck. You can see it in Kueng's body-worn  
12      camera video. I'll play just --

13                     (Video recording played)

14                     That clip is from 30 seconds after Lane said  
15      Mr. Floyd had passed out.

16                     But you, as jurors, can also use your common sense  
17      to determine that Kueng could see Chauvin's left knee.  
18      While he was sitting at Mr. Floyd's waistline right next to  
19      Officer Chauvin, Mr. Floyd's head was no more than a few  
20      feet away from him.

21                     In terms of his ability to observe the  
22      unreasonable force, he heard Mr. Floyd say he couldn't  
23      breathe because of the knee on his neck. He could hear and  
24      see and feel that Mr. Floyd stopped talking and stopped  
25      moving.

1                   He told Lane to just leave him when Lane asked  
2 about rolling Mr. Floyd on his side. He heard Lane say that  
3 Mr. Floyd had lost consciousness and asked whether Mr. Floyd  
4 had a pulse. He twice checked for Mr. Floyd's pulse and  
5 said he couldn't find one.

6                   And, of course, the bystanders were also  
7 indirectly telling Kueng what was happening. Now, with  
8 respect to those bystanders, Kueng testified he heard noise.  
9 And when asked if he heard words, he claims he heard  
10 expletives.

11                  Watch his body-worn camera video, Exhibit 7;  
12 review the transcript, Exhibit 7-A. As soon as Alyssa  
13 Funari yelled, "He's about to pass out," Lane responded,  
14 "Yeah, he's passing out." And, again, when off-duty  
15 firefighter Genevieve Hansen started demanding a pulse  
16 check, Kueng checked for a pulse.

17                  Watch what he did at the time, not what he said on  
18 the stand. Listen to the video. Kueng heard the  
19 bystanders, and that's another way he had reason to know  
20 about Chauvin's unreasonable force.

21                  So the second consideration for failure to  
22 intervene, that Defendants Thao and Kueng observed or  
23 otherwise knew that unreasonable force was being used, has  
24 been met.

25                  The third part of this constitutional violation --

1           that's "C" up on the screen -- asks whether Defendants Thao  
2           and Kueng had the opportunity and means to intervene to stop  
3           the unreasonable force.

4           They had the opportunity and the means. They were  
5           police officers with guns and badges, specialized training,  
6           and fellow officers and supervisors that they could call on  
7           the radio. They could speak. They could ask questions.

8           This wasn't a split second use of force, like a  
9           gunshot wound or a kick to the head, where the opportunity  
10          to intervene in the force is over before onlooking officers  
11          have a chance to jump in and make things right. Not split  
12          second. Not 30 seconds. Not a minute. Several minutes,  
13          569 seconds.

14           MR. ROBERT PAULE: Your Honor, I'd object. This  
15          violates *Graham vs. Connor*.

16           THE COURT: It's overruled. Final argument. You  
17          may argue.

18           MS. SERTICH: Defendants Thao and Kueng watched  
19          and listened to George Floyd's condition slowly deteriorate  
20          while Derek Chauvin pressed his knee into George Floyd's  
21          neck, and they were right there next to him, within speaking  
22          distance, within touching distance, within distance to tap  
23          Mr. Chauvin's shoulder and tell him, "He's not okay, we need  
24          to move him now." They had the ability, authority,  
25          opportunity, means, and duty to intervene for more than nine

1 minutes.

2 And while we're talking about the opportunity to  
3 intervene, I want to be clear about something. You've heard  
4 the defense suggest over and over during this trial that  
5 those bystanders are somehow to blame because they made the  
6 scene unsafe. As Genevieve Hansen testified, the only  
7 person that scene was unsafe for was George Floyd.

8 Every day in the United States hundreds of  
9 thousands of police officers and even hundreds of officers  
10 working just for the Minneapolis Police Department go to  
11 work and act with courage. It is incredibly important work.  
12 What could be more important than protecting our community  
13 from possible harms?

14 Officers literally run into danger, into  
15 situations with active shooters, into violent domestic  
16 disputes, into people who want to cause them harm. They  
17 perform jobs under incredible stress. They act with almost  
18 unbelievable courage. This case isn't about those officers.

19 In this case these bystanders saw a violent crime  
20 being committed by a police officer. They begged police  
21 officers to do something about it, which is a normal  
22 reaction to seeing a crime. They are not yelling threats.  
23 They're yelling: "He's not talking." "He's passing out."  
24 "Check his pulse."

25 And the police officers stood by and watched doing

1 nothing as the perpetrator of the crime, who happened to be  
2 a fellow officer, pressed a knee into a man's neck until  
3 slowly, minutes later, he died.

4                   And even while watching a police officer kill a  
5 man in front of them, these good Samaritans stayed  
6 non-violent and compliant. It seems the defense wants you  
7 to think that the bystanders should have seen what they saw,  
8 done nothing, and walked away.

9                   That can't be the right answer, not in the United  
10 States. In this country we are not prohibited from  
11 questioning the police or other public officials. Each  
12 citizen has the right to do so. Nobody is above the law.

13                   Maybe the reason the defense wants to suggest that  
14 the bystanders should have looked the other way is because  
15 that's what each of the defendants did.

16                   MR. PLUNKETT: Burden shifting. Objection.

17                   MR. GRAY: Objection.

18                   THE COURT: I sustain the objection.

19                   MS. SERTICH: Equally nonsensical is the  
20 defendants' claim that the group of bystanders was somehow  
21 threatening to --

22                   MR. PLUNKETT: Objection. Disparaging.

23                   MR. GRAY: Objection, Your Honor. My client never  
24 claimed that. She says "defendants." My client is not even  
25 involved in this.

1                   THE COURT: I think it's repetitious, but I'll let  
2 you continue, counsel.

3                   MS. SERTICH: We're talking about a group of  
4 unarmed, upset, but well-behaved bystanders. We're talking  
5 about minors, a sworn firefighter, and a 61-year-old man, a  
6 no doubt vocal but compliant man, who literally crossed his  
7 hands in front of him when he stepped off of the curb, who  
8 pulled others back onto the curb at Defendant Thao's  
9 direction.

10                  You heard from a number of law enforcement  
11 officers in this case, Inspector Blackwell and Lieutenant  
12 Zimmerman to name just two, that the bystanders were not a  
13 threat. Inspector Blackwell noted they were complying with  
14 orders to back up onto the sidewalk. Lieutenant Zimmerman  
15 told you that, based on the hundreds and hundreds of crime  
16 scenes he's been to, these bystanders were actually trying  
17 to help Mr. Floyd to be able to breathe with their  
18 suggestions. Even defense expert Ijames told you the  
19 officers on scene did not appear to be threatened by these  
20 bystanders.

21                  You know in a bunch of ways that the defendants  
22 weren't actually scared of the bystanders.

23                  First, you have the video where no one looks the  
24 least bit scared. You can watch the videos and see that for  
25 yourselves.

1                   Second, you have the defendants' actions.

2                   Defendant Thao mocked the bystanders. Again, Defendant  
3                   Kueng picked gravel out of a tire. Defendant Lane squatted  
4                   casually, arms dangling loosely over his thighs.

5                   Even Kueng told you from his side of the squad car  
6                   he simply assumed the scene might not be safe because  
7                   Officer Chauvin didn't do anything. Yet, he never said a  
8                   word to ask Chauvin about it.

9                   Defendant Thao straight up told you the scene was  
10                  safe enough to render medical aid to Mr. Floyd.

11                  And, finally, you know they weren't threatened  
12                  because none of the defendants did any of the things  
13                  officers do when they are threatened. They didn't call for  
14                  backup or Thao could have asked Lane, who stand 6'7" tall  
15                  and was serving no purpose near George Floyd's feet, to  
16                  come --

17                  MR. ROBERT PAULE: Your Honor, I'd object. That  
18                  violates the pretrial order and she's shifting the burden.

19                  THE COURT: I sustain that. You can't do that,  
20                  counsel.

21                  MR. ROBERT PAULE: Would note the record for  
22                  prosecutorial misconduct repeatedly during the closing  
23                  argument.

24                  THE COURT: Noted.

25                  Continue.

1 MS. SERTICH: The truth is Thao didn't need  
2 help --

3 MR. ROBERT PAULE: I'd object to the use of the  
4 word "truth." No one knows what the truth is or is entitled  
5 to it. That is totally improper.

6 THE COURT: Overruled. It's final argument.

7 MS. SERTICH: The truth is Thao didn't need help  
8 because the bystanders weren't a threat. Kueng told you as  
9 much from the stand.

10 The defendants never informed EMS that the scene  
11 was not Code 4, meaning safe, and did not warn EMS that  
12 there was any danger before or upon their arrival. Kueng  
13 testified he didn't feel it was necessary for him to do  
14 anything to assist Thao as the paramedics arrived on the  
15 scene. And the paramedics were, in fact, able to safely  
16 load Mr. Floyd onto a stretcher and get him in the  
17 ambulance.

18 The defendants never believed that these  
19 bystanders were a threat. The people standing there were,  
20 in fact, doing more than the officers. And that's the  
21 problem with this scene. The officers, and not the  
22 bystanders, should have been doing everything in their power  
23 and authority to stop the unreasonable force in front of  
24 them.

25 MR. GRAY: Judge, I object to this. My client is

1 not charged with intervention and she keeps including "the  
2 officers." She can separate them by --

3 THE COURT: Well, counsel, I think it's very clear  
4 that there's a Count 2, there's a Count 3. To the best of  
5 my knowledge, she's dealing with Count 2 and your client is  
6 not charged in Count 2.

7 MR. GRAY: Thank you.

8 THE COURT: Continue.

9 MR. PLUNKETT: Objection. Burden shifting too,  
10 Your Honor.

11 THE COURT: It's overruled.

12 MS. SERTICH: Again, watch the video.

13 The bystanders only really got loud when George  
14 Floyd was transferred with no pulse and not breathing, head  
15 hanging limply to the side onto a stretcher. Even then was  
16 Thao concerned or threatened when they were at their most  
17 agitated?

18 (Video recording played)

19 No. He turned his back on them. They all did. A  
20 reasonable officer would not turn his back on a threat.

21 The third part of this second element has been  
22 proven beyond a reasonable doubt. Kueng and Thao had the  
23 opportunity and the means to intervene in Chauvin's use of  
24 force.

25 Now, the last part of this element, part "D" on

1           the screen, requires you to consider whether Defendants Thao  
2           and Kueng failed to take reasonable steps to intervene to  
3           stop the unconstitutional force.

4           That's easy, even though it was not easy to watch,  
5           because neither of these defendants took any steps, not one,  
6           to even try to get Mr. Chauvin off of Mr. Floyd. You've  
7           seen the video. Not one. Not one statement. Not one  
8           gesture. Not one physical intervention.

9           The only officer who said anything at all,  
10          Defendant Lane, isn't charged in this count. And when  
11          Defendant Lane asked for the first time if they should roll  
12          Mr. Floyd on his side, Kueng shot him down. He said, "No,  
13          just leave him."

14          Those are the four parts of this constitutional  
15          violation and that is how you know the evidence proves  
16          Defendants Thao and Kueng violated George Floyd's right to  
17          be free from Officer Chauvin's use of unreasonable force,  
18          the second element of Count 2.

19          Also keep in mind every police officer has their  
20          own independent duty to intervene. That makes sense,  
21          because it doesn't help the person in custody if everyone  
22          can point their finger and say later it was someone else's  
23          responsibility, like here if Thao tried to argue it was  
24          Kueng and Lane's duty because they're sitting right there  
25          next to Officer Chauvin or if Kueng tried to say his duty to

1           intervene goes away because he heard Chauvin rebuff Lane's  
2           questions. The responsibility is on them all. They all  
3           have to act. The constitutional duty to act applies to them  
4           individually and independently.

5                 Also keep in mind that an officer has a duty to  
6           intervene regardless of rank or seniority. Now, that's not  
7           really a concern with respect to Thao. He's right there.  
8           He's experienced. He's Chauvin's partner. He certainly had  
9           the means to save his partner from himself.

10                But what about Kueng? You heard from Lieutenant  
11           Zimmerman, from Inspector Blackwell, from Officer Mackenzie,  
12           from Chief Longo, even from defense expert Steve Ijames  
13           everyone has the duty to intervene. It's right there in the  
14           MPD policy.

15                And the MPD encouraged that kind of behavior  
16           early, at the academy, remember, by telling academy  
17           recruits, like Kueng, that they would be responsible for the  
18           actions of their co-recruits and actually both their actions  
19           and their inaction at the academy before they were even on  
20           the streets.

21                And, yes, the MPD policy and procedures manual is  
22           more than 500 pages long, but the recruits got a smaller  
23           selection in that academy handbook, just 30 pages selected  
24           for the recruits as the most important to learn. And what  
25           was included? Use of force, duty to intervene. And then

1       they discussed it with the recruits and used scenario-based  
2       training to emphasize the communication that has to happen  
3       among a team of officers using force.

4                  Inspector Blackwell told you that their final  
5       scenario at the academy involved a fight with five suspects,  
6       and the main point of this scenario was for the recruits to  
7       communicate with one another.

8                  And so as soon as they got a suspect into custody,  
9       they had to roll the suspect over on their side and  
10      communicate with the other recruits on the scene about what  
11      to do next. And they had to keep repeating that strategy  
12      with each suspect until the scene was controlled and safe.

13                 Kueng also should be expected to intervene because  
14      he'd been trained on how to intervene when someone is  
15      committing a crime. He had been trained on how to gain  
16      compliance when someone isn't doing what they're supposed  
17      to. That starts with presence and then moves to verbal  
18      commands and then moves to physical contact.

19                 He practiced those during his FTO period when he  
20      went on about 185 calls for service, including calls -- and  
21      you all heard about the details of one -- where Kueng had to  
22      work with other officers to restrain a violent person and  
23      attempted to get that person up off the ground, even while  
24      the person was still kicking.

25                 Mr. Chauvin was the same rank, officer, as the

1 defendants here. It makes no difference that an officer has  
2 19 years on the job with lots of experience on the street or  
3 if the officer has five months on the job like Defendant  
4 Kueng, whose training is still fresh in his head.

5 As Lieutenant Zimmerman told you, when we take our  
6 oath to be police officers, when they pin that badge on us,  
7 it doesn't mean that you get a free pass for a day or a week  
8 or six months or a year. It means that you're responsible  
9 for a person's safety, just as much as I would be or the  
10 chief of police would be. We all take the same oath.

11 And you know what? That makes sense. When  
12 someone calls the police, they don't get to ask for a  
13 19-year veteran. They're asking for a sworn officer,  
14 someone with the authority to enforce the laws the way they  
15 can't on their own.

16 When an officer takes on that responsibility, they  
17 assume all of the responsibilities, the duties that come  
18 with it. They don't get to pick and choose, follow some  
19 obligations and not others, or to protect people in custody  
20 only when a new officer is on scene, but not when an  
21 experienced officer shows up. The laws of the United States  
22 simply do not permit experienced or new police officers to  
23 violate the rights of the people in their custody.

24 And one other thing. You've heard a lot about  
25 whether Officer Chauvin controlled the scene. Everyone,

1       including the defendants themselves, agreed that controlling  
2       a scene doesn't change the duties of the noncontrolling  
3       officers.

4                 But look and listen carefully what Officer Chauvin  
5       says and also to how little he says over the course of nine  
6       and a half minutes, how Kueng rebuffs Lane when Lane first  
7       asks if Mr. Floyd should be rolled on his side. Officer  
8       Chauvin is not ordering these defendants around. He barely  
9       talks to them.

10               And you don't need training to know that niceties,  
11       like the need to call someone "sir," do not trump a human  
12       life. You just need plain old common sense and plain old  
13       human decency. The officers knew that George Floyd couldn't  
14       breathe, didn't have a pulse, and was dying.

15               The defense has suggested that it was difficult or  
16       uncomfortable for newer officers to question the actions of  
17       Chauvin, but this argument simply means that they balanced  
18       the discomfort of questioning a colleague against protecting  
19       the safety of a man in their custody and care, and then made  
20       the choice not to upset their colleague rather than do their  
21       duty, even though that choice resulted in the death of a  
22       human.

23               The government has proven beyond a reasonable  
24       doubt that the defendants violated George Floyd's  
25       constitutional rights by failing to intervene, which is the

1 first element of Count 2.

2                   The next element to address is whether the  
3 government has proven the defendants acted willfully,  
4 meaning they acted with a bad purpose or improper motive to  
5 disobey or disregard the law, specifically intending to fail  
6 to do what the law requires. What this means is that the  
7 defendant has to intentionally fail to intervene knowing  
8 that the law requires him to intervene.

9                   This means the government must prove that Thao and  
10 Kueng knew that failing to intervene was wrong, but they  
11 failed to do it anyway. In other words, they knew better.

12                  Don't get tripped up by the term "bad purpose."  
13 It is a bad purpose for an officer to know his duty and  
14 decide not to act. If you have kids, you know what  
15 "willfulness" means. It's not complicated. They know it's  
16 wrong and they do it anyway. That's the bad purpose. They  
17 don't have to intend a tragic outcome and they don't have to  
18 wish someone harm.

19                  Here's something important to keep in mind. In  
20 order to prove that the defendants acted willfully, the  
21 government does not have to show that the defendants acted  
22 with any ill will towards George Floyd or even that they  
23 intended to hurt him.

24                  I wanted to repeat this because you should keep  
25 this in mind when defense counsel is making their closing

1 arguments. The government has not alleged and does not need  
2 to prove any ill will towards George Floyd.

3 For Count 2 the government has to prove the  
4 defendants knew the force Officer Chauvin was using was  
5 unreasonable and that they had a duty to stop it and yet  
6 they chose, for whatever reason, to ignore that duty.

7 That's willfulness.

8 And willfulness is a state of mind, which means  
9 that for this element you have to figure out what was in the  
10 defendants' heads. There are a few ways to figure out  
11 what's going on inside an officer's head.

12 Sometimes you can tell by what he does or doesn't  
13 do or what he does or doesn't say. And another way you can  
14 figure out what's in an officer's head is to look at the  
15 training he received and the policies he agreed to. You can  
16 figure out what was in his head by looking at the  
17 information that was put in his head during training.

18 Here, the defendants from their training very well  
19 knew they were required to intervene in an unreasonable use  
20 of force. They chose not to intervene. They acted  
21 willfully.

22 You heard from Chief Kelly McCarthy of the  
23 Minnesota POST Board that the duty to intervene is one of  
24 those core learning objectives that's so important, they  
25 bring it up through all of the officers' education.

1                   And Defendants Thao and Kueng received explicit  
2 training on the duty to intervene as well. Their decisions  
3 in this case certainly violated MPD policy, which is proof  
4 of their willfulness.

5                   MR. PLUNKETT: Objection. Improper statement.

6                   THE COURT: It's overruled.

7                   MS. SERTICH: As you saw --

8                   THE COURT: Continue.

9                   MS. SERTICH: -- MPD policy sets forth a clear use  
10 of force policy that requires officers to use the amount of  
11 force that is objectively reasonable in light of the facts  
12 and circumstances known to the officer at the time the force  
13 is used. This is just the beginning of that policy, you  
14 might remember. As you may recall, the sanctity of life is  
15 of paramount concern. It is one of the purposes or  
16 cornerstones of the policy.

17                  The MPD policy and procedure manual also clearly  
18 sets forth these defendants' duty to intervene. It shall be  
19 the duty of every sworn employee present at any scene where  
20 physical force is being applied to either stop or attempt to  
21 stop another sworn employee when force is being  
22 inappropriately applied or is no longer required.

23                  You heard testimony from Inspector Blackwell that  
24 Kueng received training on this point in the year prior to  
25 the killing of George Floyd while he was training at the

1 academy.

2 Thao also learned of the formalized duty to  
3 intervene as part of MPD policy when it was added to the  
4 policy and procedural manual in 2016. He was also trained  
5 on the policy during defensive tactics refresher courses in  
6 2018 and 2019.

7 Take a close look at that policy again. Every  
8 sworn employee. There are no exceptions here, not for  
9 officers of different ranks, ages, or seniority. The  
10 defendants knew this. They understood it.

11 One of the purposes of this policy, as we heard  
12 from the law enforcement witnesses in this case, is to  
13 protect other officers from themselves in challenging  
14 situations. Why would that not apply to our more junior  
15 officers?

16 Kueng told you he knew he had the duty to  
17 intervene, but he didn't intervene in part because he didn't  
18 know whether the scene was safe. I understand why he would  
19 say that now, but we've already discussed what he said and  
20 did that day that make it clear he and the other officers  
21 did not feel that way on May 25th, 2020.

22 Kueng also told you he didn't intervene because he  
23 didn't know the force was unreasonable. Derek Chauvin  
24 pressed his knee into George Floyd's neck for nine and a  
25 half minutes. Kueng testified he didn't recognize the force

1 as unreasonable because he believed Chauvin could be using a  
2 leg to neck restraint that's mentioned in MPD policy but  
3 that he and the other officers were never trained to use.

4                 But it does not matter whether Kueng recognized  
5 this leg restraint as part of MPD policy or not because, as  
6 he was trained at the academy, neck restraints of any kind,  
7 as described in MPD policy and during training these  
8 defendants actually received, including hands-on,  
9 scenario-based training, can only be used on subjects who  
10 are actively resisting, period.

11                 Active resistance is when a person engages in  
12 action to make it more difficult for officers to achieve  
13 actual physical control. Again, review the video evidence  
14 in this case. The three officers atop Mr. Floyd had  
15 physical control of Mr. Floyd very early in the restraint,  
16 and so they knew from training the use of any neck restraint  
17 after that time, based on the policy and based on their  
18 training, is unreasonable, regardless of the exact technique  
19 being used, arm, leg, doesn't matter, and regardless of the  
20 amount of pressure that was being applied.

21                 And the scenario-based drills these officers had  
22 on the use of neck restraints had, consistent with MPD  
23 policy, trained them that when an officer uses a neck  
24 restraint and causes someone to go unconscious, the officer  
25 must take immediate steps to assess the person's condition

1 and aid a person to bring them back to consciousness.

2                 Here, Kueng could see the exact opposite. Chauvin  
3 tipped kneeling on Mr. Floyd, keeping him unconscious.

4 Chauvin's unreasonable force was obvious and inexcusable.

5 The only people who have suggested otherwise are the  
6 defendants, and their self-interest is obvious.

7                 MR. PLUNKETT: Objection. Burden shifting.

8                 THE COURT: Sustained.

9                 MS. SERTICH: Everyone else, from children on the  
10 scene, to the defense's expert, and everyone in between,  
11 acknowledged that Chauvin's force was indefensible.

12                 MR. ROBERT PAULE: Your Honor, I'd object on  
13 burden shifting and the continuing, continuing referring to  
14 a juvenile witness who has not testified.

15                 MS. SERTICH: We have many other juveniles on the  
16 scene.

17                 THE COURT: Counsel, there were multiple people  
18 that were under the age of 18 at the time of this. So to  
19 the one person, yes, I sustain. To the other people, I'd  
20 overrule. In the meantime, it's final argument. Let's  
21 continue.

22                 MS. SERTICH: Thank you, Your Honor.

23                 Defendant Thao said he didn't intervene because he  
24 trusted the other officers on scene to do the right thing.  
25 His argument completely undermines the point of

1 intervention.

2 He was trained that when you see something that  
3 doesn't look lawful, you have to do something about it and  
4 not blindly follow another officer's judgment. And, by the  
5 way, he could see that the other officers on the scene were  
6 not doing the right thing.

7 MR. ROBERT PAULE: I'd object to that as  
8 misstating the facts, Your Honor.

9 MR. GRAY: Object to that, Your Honor. It  
10 includes my client --

11 THE COURT: It's overruled. It's final argument,  
12 counsel. Let her argue.

13 MS. SERTICH: The defendants voluntarily and  
14 intentionally chose not to act in this case, contrary to  
15 their training. The government has proven their willfulness  
16 beyond a reasonable doubt.

17 That brings us to the fourth and final element of  
18 Count 2. As to failure to intervene, the government must  
19 prove and has proven in this case that when the defendants  
20 failed to intervene, George Floyd suffered bodily injury  
21 and/or died as a result of the defendants' conduct.

22 During your deliberations, if you find the  
23 defendants guilty of Count 2, that will just be based on the  
24 bodily injury and then you will have the opportunity on the  
25 verdict form to indicate whether the offense also resulted

1       in the death of Mr. Floyd or, as has been proven over the  
2       past several weeks, both bodily injury and death.

3                  Bodily injury is easy to figure out. You will see  
4       in the instructions it means anything from a cut or  
5       abrasion, to physical pain, to impairment of a bodily organ.

6                  You saw overwhelming evidence of injury to George  
7       Floyd in this case that was caused by the force when he was  
8       restrained on the ground, from his cries of pain, to his  
9       abrasions that Dr. Baker told you were consistent with being  
10      pressed against the concrete, to the impairment of his  
11      airway, lungs, and eventually heart and brain while the  
12      officers compressed his body.

13                 For Count 2 Judge Magnuson will instruct you that  
14      death results from the constitutional violation where  
15      Mr. Floyd's death was a foreseeable result of the  
16      constitutional violation. You should note here that the  
17      government does not have to prove that the defendants  
18      intended for Mr. Floyd to die.

19                 The medical examiner who conducted the autopsy in  
20      this case, Dr. Baker, determined that Mr. Floyd died from  
21      cardiopulmonary arrest, complicating law enforcement subdual  
22      restraint and neck compression. In layman's terms,  
23      Mr. Floyd died because his heart and lungs stopped working,  
24      and the immediate cause was being subdued and then  
25      restrained with a neck restraint by law enforcement.

1                   Dr. Baker said Mr. Floyd's underlying health  
2 conditions played a contributing role, but were not the  
3 immediate cause of death.

4                   He also deferred to a pulmonologist about whether  
5 the partial blockage of an airway and the inability of a  
6 person to fully expand their chest cavity could cause  
7 someone to die by asphyxiation and deferred to a  
8 toxicologist about whether the drugs in Mr. Floyd's system,  
9 fentanyl and methamphetamine, would have been enough to kill  
10 someone with Mr. Floyd's history.

11                  He classified the death as a homicide, meaning the  
12 actions of another person or persons were involved in  
13 causing Mr. Floyd's death.

14                  You heard the testimony of medical care providers  
15 and experts during this trial, Dr. Systrom and Dr. Bebarta,  
16 physicians whose lives' work revolve around the lungs and  
17 the heart, toxicology and resuscitation.

18                  What you learned from them is that George Floyd  
19 died while being restrained on the ground and that he died  
20 from asphyxiation because of the unreasonable force, the  
21 obstructive and restrictive compression that prevented him  
22 from getting sufficient oxygen.

23                  Over the course of the restraint, George Floyd was  
24 deprived of oxygen because his body was compressed and  
25 restricted in a way that didn't allow him to take in and use

1 sufficient oxygen to keep his brain functioning and his  
2 heart beating.

3 That deprivation came from being held down on  
4 concrete with his arms handcuffed behind his back; from  
5 Chauvin's knees on his upper airway and posterior chest  
6 wall, which partially blocked his airway and prevented his  
7 chest and diaphragm from expanding; from Defendant Kueng's  
8 downward pressure on Mr. Floyd's wrist, which pushed  
9 Mr. Floyd's forearm into his back.

10 What you can conclude is that while Officer  
11 Chauvin's actions, along with the actions of Dr. Kueng  
12 [sic], caused these issues, the failure to intervene then  
13 also resulted in this death.

14 You heard from Dr. Systrom that George Floyd did  
15 not die from a heart event that day and would not have died  
16 from a heart event that day had he not been restrained on  
17 the ground by the officers.

18 You heard from Dr. Bebartha, the emergency room  
19 physician and toxicologist, that George Floyd did not die  
20 from a drug overdose that day and would not have died from a  
21 drug overdose without the actions and inaction of these  
22 defendants.

23 A key measurement taken in the ambulance,  
24 Mr. Floyd's end-tidal carbon dioxide level, was almost  
25 double the normal level, and this is scientific and

1 measurable proof that Mr. Floyd died from low oxygen.

2                   While it has been a few weeks since evidence from  
3 these experts was presented to you, you will recall that  
4 none of these facts or their conclusions were seriously  
5 contested.

6                   MR. PLUNKETT: Objection. Burden shifting.

7                   THE COURT: That's overruled.

8                   MS. SERTICH: The government has presented you  
9 with proof beyond a reasonable doubt that Officer Chauvin's  
10 unreasonable force resulted in both -- I'm sorry. The  
11 government has presented you with proof beyond a reasonable  
12 doubt that the defendants' conduct in failing to intervene  
13 in Officer Chauvin's unreasonable force resulted in both  
14 bodily injury to and the death of George Floyd.

15                  All four elements of Count 2 have been met.

16                  Defendants Thao and Kueng are guilty of the crime charged in  
17 Count 2.

18                  That brings us to Count 3, deliberate  
19 indifference, for which there are also four elements, four  
20 things the government must prove beyond a reasonable doubt  
21 as applicable to all three defendants, Thao, Kueng, and  
22 Lane.

23                  Again, we'll address that third element first,  
24 that the defendants acted under color of law, which is the  
25 same as Count 2. Just as in Count 2, you know the element

1       is satisfied because the parties have stipulated to it.

2                  Now, moving back up to the first element, the  
3       government must again prove that defendants deprived George  
4       Floyd of a right secured by the Constitution of the laws of  
5       the United States, but for Count 3 this is a different  
6       constitutional right.

7                  Count 3 charges all three officers with a  
8       constitutional violation called deliberate indifference or  
9       the failure to provide Mr. Floyd with medical aid. A police  
10      officer violates the Constitution when he or she  
11      deliberately denies or delays critical medical care to a  
12      person in police custody.

13                 Like the constitutional violation in Count 2, this  
14      one also has some subelements that we have to go through.

15                 First, the government must prove, in "A" up on the  
16      screen there, that Mr. Floyd had an objectively serious  
17      medical need.

18                 Judge Magnuson will tell you that a serious  
19      medical need includes a need that is so obvious that even  
20      people with no formal medical training would recognize that  
21      care is required. So obvious, say, that a teenager can  
22      recognize it.

23                 Here, there was no doubt that George Floyd had a  
24      serious medical need. That evidence was overwhelming. He  
25      couldn't breathe, as the officers heard from both him and

1           the bystanders. He passed out, as noted by Defendant Lane.  
2           Eventually Kueng couldn't find a pulse. Mr. Floyd went into  
3           cardiac arrest and died.

4                 The first part of this element has been met.

5                 The second part of deliberate indifference --  
6                 that's "B" on this list -- is that the defendants knew of  
7                 the serious medical need. You can use your common sense on  
8                 this point, like any other.

9                 Kueng testified that he couldn't say whether he  
10               thought Mr. Floyd had a serious medical need while Mr. Floyd  
11               was restrained on the ground. As jurors, you get to decide  
12               what testimony you believe or do not believe.

13                 You should not believe Kueng's testimony on this  
14               point because, as he also testified, he thought it was  
15               possible Mr. Floyd was suffering from excited delirium,  
16               which he had been trained was a potentially dangerous  
17               problem.

18                 He was aware Mr. Floyd was initially saying he  
19               couldn't breathe. He heard Mr. Floyd's talking slow and  
20               then observed that Mr. Floyd stopped talking. He observed  
21               that Mr. Floyd stopped moving. He heard Lane say that  
22               Mr. Floyd had lost consciousness and then, of course, he was  
23               unable to find a pulse.

24                 As jurors, you can use your common sense to  
25               consider this testimony. Anyone, anyone can recognize that

1 someone with a knee on their neck who has slowly lost the  
2 ability to speak, stopped moving, and gone unconscious has a  
3 serious medical need.

4 Kueng had to have felt Mr. Floyd grow weaker and  
5 weaker and then limp underneath him. Any person, even  
6 without checking a pulse and without any training, let alone  
7 emergency medical responder certification, can see that  
8 would be a serious medical need.

9 Add to that the fact that a person's pulse cannot  
10 be found, for any person, any reasonable person trained or  
11 untrained, that is an emergency requiring immediate action.

12 As Genevieve Hansen said on the scene that day,  
13 the fact that they aren't checking for a pulse and doing  
14 chest compressions at that point is on another level.

15 Thao was also aware of the serious medical need  
16 because, although while he told you Mr. Floyd's trachea was  
17 being protected by the ground, I think we heard that right,  
18 he thought Mr. Floyd's trachea was being protected by the  
19 ground, he stood for six minutes and stared at Officer  
20 Chauvin and George Floyd while Mr. Floyd said he couldn't  
21 breathe, fell silent, stopped moving, and then was rendered  
22 unconscious.

23 He was right there, not yet curbside facing the  
24 bystanders, for more than six minutes. Then when he faced  
25 the bystanders, they repeatedly told him in all the ways

1       we've discussed that George Floyd was in serious medical  
2       need.

3                     Charles McMillian, 61 years old and out being  
4       nosey in the neighborhood, as he described it, told you that  
5       he was trying to tell the officers that what they were doing  
6       was wrong because he could tell things weren't right with  
7       Mr. Floyd and that he could not breathe.

8                     This raises another point that may seem obvious.  
9       To the extent Thao turned away from Officer Chauvin and  
10      Mr. Floyd after six minutes, he already knew something was  
11      very wrong. He saw Mr. Floyd was unconscious, and he was  
12      told that it was getting even worse. Thao does not get a  
13      pass on knowledge of Mr. Floyd's serious medical condition  
14      by actively attempting to avoid it.

15                  Now, in addition to those same reasons we know  
16      Kueng was aware of Mr. Floyd's serious medical needs, we  
17      know Lane was aware of Mr. Floyd's serious medical needs,  
18      but also because he talked about it. He expressed concern  
19      about excited delirium and twice asked whether Mr. Floyd  
20      should be rolled on his side.

21                  When Lane testified, he tried to scale back his  
22      concern for Mr. Floyd's serious medical need to make it seem  
23      like he possibly didn't have knowledge of those medical  
24      needs, but you saw what his belief was in those moments on  
25      top of Mr. Floyd.

1                   The second part of deliberate indifference, that  
2 the three defendants actually knew Mr. Floyd had a serious  
3 medical need, has been proven in this case.

4                   The third party of the constitutional violation,  
5 which is part "C" up on the screen, is that the officers  
6 failed to take reasonable measures to address Mr. Floyd's  
7 serious medical need, which is clearly met here because they  
8 did nothing to render medical aid during the time Mr. Floyd  
9 lay on the ground.

10                  Jenna Scurry, the dispatcher, who could tell  
11 something was wrong after watching the events unfold on a  
12 small screen in her office, testified that none of the  
13 officers, which would include Lane, who made the original  
14 call to EMS, and Thao, who upped the request to the more  
15 urgent Code 3, did not request fire and rescue.

16                  Contrary to their training and common sense, they  
17 did not tell dispatch the reason for the upgrade to the  
18 Code 3 emergency, never said the patient was having  
19 difficulty breathing, never said the patient was  
20 unconscious, never said they couldn't find a pulse, even  
21 though the radios are right there on their shoulders. Derek  
22 Smith told you that in this case he should have been told  
23 why there was a change from Code 2 to Code 3.

24                  And had the officers even taken that simple step,  
25 Jenna Scurry told you the Minneapolis Fire Department would

1 have been on the scene earlier. Fire Captain Jeremy Norton  
2 and Firefighter Genevieve Hansen told you they could have  
3 started CPR on the ground and the paramedics could have  
4 arrived prepared to deal with a cardiac arrest. Instead  
5 they responded to a Code 3, mouth injury.

6 As you heard from a number of witnesses, including  
7 defense expert Steve Ijames, the most simple form of medical  
8 aid, placing Mr. Floyd in the side recovery position, should  
9 have been performed before Mr. Floyd fell unconscious. Any  
10 of these three defendants could have taken that step and  
11 saved George Floyd's life before his condition moved from  
12 serious to critical.

13 As you also heard from Inspector Blackwell and  
14 Officer Mackenzie and as common sense tells you, Lane's two  
15 questions about whether Mr. Floyd should have been rolled on  
16 his side were not reasonable medical measures.

17 The questions were not reasonable measures to  
18 address Mr. Floyd's serious medical need. The questions did  
19 not get Mr. Floyd more air in his lungs. They didn't get  
20 the officers stopping his breathing [sic] off of him so that  
21 he could expand and contract his lungs and take air into his  
22 throat.

23 Then, as you again very clearly heard from Officer  
24 Mackenzie and Inspector Blackwell, as soon as these former  
25 officers discovered George Floyd did not have a pulse, they

1       should have immediately started CPR. It didn't matter  
2       whether the ambulance had been called. They should have  
3       started that immediately. Remember what Lieutenant  
4       Zimmerman said? You do everything you can until a medical  
5       professional can take over the medical aid.

6                  You've heard some testimony that while Mr. Floyd  
7       certainly needed immediate CPR, Kueng and Lane weren't sure  
8       the scene was safe enough to perform any additional medical  
9       assessment or medical care of any kind because there were  
10      people nearby they couldn't see who were shouting.

11                 But defense expert Steve Ijames conceded that  
12      Kueng could have stood up and checked Mr. Floyd's carotid  
13      pulse, just like the paramedic, Derek Smith, did a few  
14      minutes later.

15                 And, again, common sense. They could have rolled  
16      Mr. Floyd on his side or performed CPR in the exact place  
17      where they had him restrained on the ground and would have  
18      been in the exact same position in terms of their safety.  
19                 All three defendants testified they knew time is of the  
20      essence when CPR is needed.

21                 One last thing on the failure to provide medical  
22      aid. Maybe these officers were mistaken about what exactly  
23      was ailing Mr. Floyd. To be clear, the defendants don't  
24      have to correctly diagnose the problem. They have to  
25      recognize there is a problem and do something.

1                   All three defendants mentioned at various points  
2                   their suspicions that Mr. Floyd was on drugs. So perhaps  
3                   they were concerned he was overdosing or perhaps they were  
4                   concerned about excited delirium, as Lane mentioned.

5                   Let's talk about excited delirium for a moment.  
6                   We all watched the videos of George Floyd's encounter with  
7                   law enforcement, and we all watched the six or so videos  
8                   that the defendants watched during their excited delirium  
9                   training. Watching all of those videos called a phrase to  
10                  mind, "one of these things is not like the others."

11                  These MPD officers were shown what excited  
12                  delirium looks like and sounds like, and that's not what  
13                  Mr. Floyd looked like or sounded like. Even for Thao, who  
14                  didn't show up on the scene until Mr. Floyd was resisting  
15                  getting into the squad car, Mr. Floyd's behavior did not  
16                  resemble what we saw in those videos. He was communicating  
17                  with the officers, not running around naked, covered in  
18                  blood. Mr. Floyd even said that he wanted to lay on the  
19                  ground.

20                  But let's assume for a moment that one or more of  
21                  the defendants mistakenly thought Mr. Floyd was suffering  
22                  from excited delirium. You all heard a lot of testimony  
23                  that shows that excited or agitated delirium is a  
24                  controversial topic, that understanding what it is is hard,  
25                  that diagnosing it is hard, that figuring out exactly what

1 factors will cause it is hard.

2                   But what we saw from the MPD training that all  
3 three defendants received and heard from a number of  
4 witnesses is that regardless of whether anyone can  
5 accurately identify excited delirium, the treatment is the  
6 same. Once you get that person restrained and handcuffed,  
7 you get them in the side recovery position as soon as  
8 possible, just like you do with anyone else who is prone and  
9 handcuffed and successfully restrained, except it may be  
10 even more urgent to get them in the side recovery position  
11 there because, according to the training, the danger of  
12 dying during an episode of excited delirium is so much  
13 higher.

14                   You heard from a number of witnesses that an  
15 officer in this situation should hover nearby, perhaps  
16 resting a hand on the arrestee to make assessment easier and  
17 to be ready if the arrestee wakes up in an agitated state,  
18 but you should not keep them in the prone position  
19 indefinitely and certainly not while they are rendered  
20 unconscious or lose a pulse.

21                   As Officer Mackenzie and defense expert Ijames  
22 told you, the officers are trained to always do those ABCs  
23 of assessment, airway, breathing, and circulation, and then  
24 react if something goes wrong. The assessment isn't  
25 providing medical aid. It's how the officers figure out

1 what aid they need to provide. These defendants didn't do  
2 any of that.

3 The excited delirium training directed the  
4 officers to place a person in the side recovery position  
5 once a person has been restrained. And as you heard from  
6 Officer Mackenzie, that side recovery position is taught in  
7 half a dozen different courses at the academy: EMR, CPR,  
8 excited delirium, Narcan, and tactical combat casualty care,  
9 also in a training video on positional asphyxia. These  
10 officers learned this concept repeatedly because it is basic  
11 and foundational to much of the care officers are trained to  
12 provide.

13 The defendants here failed to take any reasonable  
14 measures to address Mr. Floyd's serious medical need. The  
15 second element of Count 3 has been satisfied.

16 So having gone through all the subelements of the  
17 first element of Count 3, we can move on to the second  
18 element of Count 3, deliberate indifference, which is,  
19 again. The willfulness:

20 And you will see we have the same basic definition  
21 of "willfulness" that we saw in Count 2, but here the  
22 government must prove that the defendants knew George Floyd  
23 was in serious distress and knew that they had a duty to do  
24 something about it and yet they intentionally failed to aid  
25 him. That's willfulness in the context of Count 3.

1                   The defendants, from their training, from the  
2 sheer obviousness of Mr. Floyd's condition and how he went  
3 from saying he couldn't breathe to not having a pulse during  
4 the nine and a half minutes Chauvin knelt on his neck, very  
5 well knew Mr. Floyd had a serious medical need.

6                   That they did nothing to change the position he  
7 was in after so many red flags demonstrates their  
8 willfulness. Because they knew Mr. Floyd needed aid and  
9 they didn't aid him, they acted willfully.

10                  Now, this should be common sense, but the  
11 defendants also had so much training. Defense expert Steve  
12 Ijames took no issue with their medical training.

13                  The MPD policy and procedure manual contains the  
14 department's policy relating to the provision of medical  
15 care. This applies to all people in need of medical aid  
16 that the officers encounter, whether or not in their custody  
17 and care.

18                  The policy says that if MPD officers come into  
19 contact with someone in medical crisis, they should contact  
20 EMS and, while waiting for EMS, provide any necessary first  
21 aid consistent with MPD training.

22                  From Officer Nicole Mackenzie we learned exactly  
23 what that medical training was. When they were cadets, the  
24 defendants received a 40-hour emergency medical responder  
25 course with both textbook learning and in-class lectures,

1 culminating in EMR certification. They trained for and  
2 received CPR certification.

3 They participated in training regarding positional  
4 asphyxia and the dangers of leaving an arrestee in the prone  
5 and handcuffed position. Notice what it says on the bottom  
6 of this screen. "When there's pressure coming up to the  
7 chest, a person has to lift body weight."

8 They participated in training regarding the  
9 necessity for constant monitoring of the ABCs of arrestees  
10 in the care and custody of officers and reassessment of the  
11 care and treatment being provided to that arrestee.

12 Defendants Kueng and Lane had been through the  
13 program less than a year before George Floyd was killed.  
14 Defendant Thao, who had been through the program a number of  
15 years prior, received annual in-service medical training  
16 with alternating years where he was refreshed on either CPR  
17 or Narcan and received this positional asphyxia training  
18 separately.

19 And throughout all of the training, both at the  
20 academy and during in-service training, many different  
21 courses are permeated with instructions regarding the side  
22 recovery position.

23 Defendant Lane received additional training while  
24 he was working at the Hennepin County Juvenile Detention  
25 Center. He had CPR training there and training regarding

1 positional asphyxia. He was trained on the dangers of  
2 putting pressure on a subject's torso or neck when they are  
3 on the ground with their hands behind them. He was trained  
4 that once restraints are applied, a person should be placed  
5 in a position that doesn't restrict breathing right away.

6 Officer Mackenzie testified that, according to MPD  
7 training, Mr. Floyd should have been placed in the side  
8 recovery position within the first couple of minutes of when  
9 he was restrained on the ground. The fact that George Floyd  
10 was saying "I can't breathe" should have further prompted  
11 the officers to take that step to address George Floyd's  
12 serious medical need.

13 Now, significantly, Officer Mackenzie made clear  
14 that these officers were trained that just because an  
15 arrestee can talk does not mean the arrestee is receiving  
16 sufficient oxygen.

17 These defendants knew what they were doing was  
18 wrong and they did it anyways. This is proof of the  
19 willfulness the defendants acted with in choosing not to aid  
20 Mr. Floyd.

21 Now, some of you might be asking yourselves about  
22 Defendant Lane in particular, why isn't it enough that he  
23 was concerned about excited delirium and asked twice if  
24 Mr. Floyd should be rolled over? After all, he was so much  
25 junior to the guy actually using the force. Why isn't that

1 enough? And I want to answer that head on.

2 Lane's suggestions demonstrate that he knew  
3 Mr. Floyd needed help and he knew what help to give, but  
4 Lane's statements didn't get Mr. Floyd any more oxygen. And  
5 in the circumstances of this case, Lane's suggestions  
6 weren't reasonable measures, not when the force being used  
7 by Officer Chauvin was so dangerous and went on for so long.

8 And because it would have taken so little for  
9 Lane, for any of the defendants to render help, if they had  
10 said, "He is not okay, we need to roll him now," then they  
11 could have rolled George Floyd over and that small action  
12 would have saved his life.

13 The defense wants you to think that there's  
14 nothing the defendants could have done, that if they had  
15 told Officer Chauvin to stop --

16 MR. PLUNKETT: Objection. Disparaging.

17 THE COURT: It's final argument. Continue.

18 MS. SERTICH: -- that if they had told Officer  
19 Chauvin to stop, he would have kept going. But we don't  
20 know that.

21 MR. GRAY: Judge, I object to that. He was told  
22 to stop.

23 THE COURT: Again, counsel, it's final argument.  
24 Continue.

25 MS. SERTICH: Listen and see if he was told to

1 stop. He was never tapped on the shoulder. Never said, "He  
2 can't breathe. We need to get up." Never picked up a radio  
3 or a cell phone. Never called a supervisor or, even once  
4 they noticed George Floyd had no pulse, "Get off of him. We  
5 need to find a pulse." For Thao, all it would have taken  
6 was taking a step or two back to the side and saying, "If  
7 you don't have a pulse, it's time for CPR." But instead  
8 they did nothing.

9 We also know Defendant Lane asked those couple of  
10 questions, but notice those questions happened before he and  
11 Kueng couldn't find George Floyd's pulse. After that he  
12 said nothing, did nothing. When the need was the greatest,  
13 he did the least.

14 Defendant Lane is differently situated than  
15 Defendants Thao and Kueng because he is the one person who  
16 spoke up and tried, meekly as it was, to intervene. And for  
17 that reason he's not charged in Count 2.

18 MR. GRAY: Judge, I object to that as improper  
19 argument, why he's not charged.

20 THE COURT: Yeah, I sustain that, counsel.

21 MS. SERTICH: What he is charged with is failing  
22 to even try to render any medical aid.

23 And another way you know that Defendants Kueng and  
24 Lane acted willfully, and this goes --

25 MR. GRAY: Judge, I object to her argument saying

1 we know. It's improper argument.

2 THE COURT: She can choose her words. It's final  
3 argument.

4 Continue.

5 MS. SERTICH: The other way you know that  
6 Defendants Kueng and Lane acted willfully, and this goes to  
7 Count 2 for Kueng as well, that they knew what they had done  
8 was wrong and did it anyway is because afterward they lied  
9 about it and tried to hide what actually happened.

10 Remember that Lane and Kueng gave statements about  
11 what happened with George Floyd later that night to their  
12 supervisor, Sergeant Pleoger, and to an investigator,  
13 Lieutenant Zimmerman. They told Sergeant Pleoger and  
14 Lieutenant Zimmerman how George Floyd appeared to be high on  
15 drugs, how they struggled to get him into the squad, that  
16 they put him on the ground, he was breathing, and then the  
17 ambulance arrived, and that they found a pipe on him.

18 Notice what they didn't say. They didn't mention  
19 that Chauvin was pressing his knee into Mr. Floyd's neck,  
20 that George Floyd was held in the prone position for nearly  
21 nine and a half minutes, that Mr. Floyd was saying he  
22 couldn't breathe and then stopped talking and moving  
23 entirely, that Mr. Floyd fell unconscious or that Mr. Floyd  
24 didn't have a pulse for several minutes, even though  
25 Defendant Lane had just performed CPR in the ambulance on

1           Mr. Floyd minutes before he gave this statement to Sergeant  
2           Pleoger, and notice not a word about excited delirium.

3           Defendant Kueng testified that the report he gave  
4           to Sergeant Pleoger was that Mr. Floyd stopped moving after  
5           EMS arrived, and then he testified that that report was not  
6           true. By the way, Thao was standing there during that  
7           report to Pleoger.

8           MR. ROBERT PAULE: I'd object. That misstates the  
9           evidence. My client moved away for a great period of time  
10          during that.

11           THE COURT: I'll sustain that, counsel.

12           MS. SERTICH: You'll be able to see the times in  
13          the video, as you can see in this picture, when Mr. Thao is  
14          standing there during the report to Pleoger and note that he  
15          added nothing, said nothing.

16           Speaking of lying, you've heard some things on the  
17          stand you shouldn't believe.

18           THE COURT: Counsel, you will note an hour and a  
19          half has passed. I would suggest that you wrap up as  
20          quickly as you can.

21           MS. SERTICH: I have just a few more points here,  
22          Your Honor.

23           Here are just a few. Thao wants you to believe  
24          his training and experience told him that if a person is  
25          talking, they can breathe sufficiently. But as Alyssa

1                   Funari pointed out five minutes into the restraint, "Is he  
2 talking now?" He was not. If Defendant Thao's true belief,  
3 in direct opposition to his training, was if you can talk,  
4 you can breathe, he should have sprung into action when  
5 George Floyd stopped talking. But he didn't.

6                   Kueng wants you to believe that he couldn't hear  
7 the bystanders begging him over and over to check George  
8 Floyd's pulse, to get the knee off of Mr. Floyd's neck, but  
9 that he could here expletives and he could hear the subtle  
10 snap of Officer Chauvin's belt as he removed his Mace.

11                  Kueng wants you to believe that the officers  
12 wanted to give EMS quick access to George Floyd, even though  
13 they didn't do a thing to get Mr. Floyd ready for EMS care.  
14 And even when EMS arrived, they all just sat there with  
15 Floyd prone in handcuffs, with Chauvin continuing to press  
16 his knee into Mr. Floyd's neck.

17                  MR. GRAY: Judge, I object to this. It's improper  
18 argument. She says they all just sat there when the EMS  
19 arrived. That's absolutely false. My client stood up, went  
20 over and --

21                  THE COURT: The jury will recall the testimony.  
22 Continue, counsel.

23                  MS. SERTICH: Kueng wants you to believe that he  
24 thought George Floyd was attracted to the plexiglass inside  
25 of the squad car, a symptom of possible excited delirium,

1           while George Floyd was panicking about the idea of even  
2           getting into the car and then struggling to get out.

3                 Lane wants you to believe that he thought George  
4                 Floyd was okay because he saw a vein sticking out in  
5                 Mr. Floyd's arm, which would mean he still had blood  
6                 pressure. You never heard or saw any training that seeing a  
7                 vein in an arm means that someone has a pulse. It also  
8                 defies common sense.

9                 You should not believe any of this testimony, and  
10                you can use these lies when you decide to believe or  
11                disbelieve Kueng and Lane and Thao's other testimony. The  
12                reason a person lies is because the person knows that he  
13                has --

14                 MR. ROBERT PAULE: I'd object to this as improper  
15                vouching.

16                 THE COURT: It's final argument.

17                 Continue.

18                 MS. SERTICH: The reason a person lies is because  
19                the person knows he has something to hide. It's evidence of  
20                willfulness. Kueng and Lane knew what they did and didn't  
21                do was wrong, and that's why they left those details out of  
22                their statements to a superior officer and an investigator.

23                 The defendants acted willfully when they didn't  
24                provide medical care to George Floyd, knowing that he needed  
25                it. The third element of Count 3 has been met.

1                   As to Count 3, failure to provide medical aid, the  
2 government must next prove and has proved that the failure  
3 to provide medical aid resulted in Mr. Floyd's bodily injury  
4 and death.

5                   It stands to reason that if the failure to stop  
6 Derek Chauvin's unreasonable force was the cause of George  
7 Floyd's death, the failure to provide him with medical care  
8 in the moment also caused his death.

9                   Because the defendants didn't take those  
10 reasonable measures to provide medical aid, rolling  
11 Mr. Floyd on his side, performing CPR, Mr. Floyd suffered  
12 those same injuries we previously discussed with respect to  
13 Count 2.

14                  You will recall that Dr. Systrom and Dr. Bebarta  
15 testified that, in line with what the MPD teaches its  
16 officers, if George Floyd had been placed in a position  
17 where he could breathe normally before he was rendered  
18 unconscious, he would not have gone into cardiac arrest. He  
19 would have lived.

20                  It was clear from the moment George Floyd was  
21 restrained on the ground that he was having trouble  
22 breathing and was in medical distress. The defendants had  
23 about five whole minutes to place Mr. Floyd in the side  
24 recovery position or sit him upright before more significant  
25 medical assistance was needed. They chose to do nothing

1 instead, and in doing nothing caused George Floyd's death.

2 You heard from the same experts that during the  
3 minutes the defendants sat there and did nothing, after  
4 Mr. Floyd's asphyxia led to his heart stopping, Mr. Floyd's  
5 chances of resuscitation plummeted down to zero.

6 Dr. Bebarta explained that if a cardiac arrest is witnessed  
7 and CPR begins immediately, chances for survival increase  
8 exponentially. As you heard from Dr. Systrom, by the time  
9 Lane began CPR in the ambulance, it was too late. CPR  
10 needed to be started on the ground by the officers to be  
11 successful.

12 Instead, contrary to their training, contrary to  
13 their EMR and CPR certification, the defendants chose to do  
14 nothing for more than two and a half minutes after Mr. Floyd  
15 became nonresponsive but before the ambulance arrived,  
16 precious minutes, as we know and as they had been trained,  
17 when a person is in cardiac arrest. They chose to do  
18 nothing, and their choice to do nothing resulted in  
19 Mr. Floyd's death.

20 The testimony and evidence presented to you prove  
21 all four elements of Count 3 beyond a reasonable doubt.

22 As a community, we have expectations of police  
23 officers. We expect officers to not only protect the  
24 community, but to serve the community with courage and  
25 compassion, like the MPD motto says.

1           We hope they'll walk the beat, get to know the  
2         community, knowing that the communities in which they work  
3         have strengths and weaknesses; and when people commit  
4         crimes, they get arrested and go to jail.

5           Arresting individuals who commit crimes is a big  
6         part of police work, but when that happens, if the person  
7         gets injured or suffers an overdose or goes into cardiac  
8         arrest, then the police do what they are trained to do.  
9         They provide medical assistance.

10           It's what we expect from them as a community  
11         because that's what the Constitution demands, to act, to  
12         provide medical care, to at the very least try to the best  
13         of their abilities.

14           And as we've heard from law enforcement officer  
15         after law enforcement officer over the last month, what  
16         needed to occur in this case was simple. And on May 25th,  
17         2020, there was no respect for the sanctity of life, no  
18         adherence to the foundation of police work, just these  
19         officers' inactions, which led to one thing, George Floyd's  
20         death.

21           The government here has the burden of proving  
22         beyond a reasonable doubt that Thao and Kueng failed to  
23         intervene to stop or attempt to stop Chauvin's unreasonable  
24         force and that they and Lane failed to provide George Floyd  
25         with necessary medical aid. The government has met and

1                   surpassed that burden.

2                   Over the last several weeks we've presented you  
3                   with evidence of the events of May 25th, 2020, evidence of  
4                   the training these officers received, and a medical review  
5                   of what happened to Mr. Floyd.

6                   But the most important things you need for this  
7                   case are simple. First, the videos showing what happened to  
8                   George Floyd while he was restrained on the ground; and,  
9                   second, your common sense.

10                  It is not complicated. All of the witnesses,  
11                  including the defendants, agreed they had a duty to  
12                  intervene, a duty to provide medical aid. It is not  
13                  complicated. Officer Chauvin pressed his knee into George  
14                  Floyd's neck while he was restrained on the ground for far  
15                  too long and everyone, including George Floyd, including the  
16                  bystanders, including these defendants, knew George Floyd's  
17                  condition was slowly deteriorating, that he was slowly  
18                  dying. Charles McMillian could tell and did tell the  
19                  officers that Mr. Floyd couldn't breathe.

20                  MR. GRAY: Judge, I object to this as repetitious.

21                  THE COURT: Repetitious. I sustain.

22                  MS. SERTICH: Alyssa Funari told the officers,  
23                  "He's not moving. In over a minute, "He's not moving."

24                  MR. ROBERT PAULE: Your Honor, same objection.  
25                  This is repetitious.

1                   THE COURT: It is repetitious, counsel.

2                   MS. SERTICH: Your Honor, I have not covered  
3 this --

4                   THE COURT: It is repetitious.

5                   MS. SERTICH: -- with Mr. Funari, and I'm about to  
6 be done.

7                   THE COURT: It is repetitious.

8                   MS. SERTICH: These defendants knew what was  
9 happening and, contrary to their training, contrary to  
10 common sense, contrary to basic human decency, did nothing  
11 to stop Derek Chauvin or to help George Floyd. And you know  
12 it because you've seen it.

13                  In their custody was in their care. Not only was  
14 George Floyd utterly unable to take care of himself, not  
15 even able to lift himself in a position to draw the breaths  
16 he needed to survive, but because these officers had their  
17 badges and their guns and their power and their authority,  
18 Mr. Floyd couldn't even count on the kindness of strangers,  
19 the bystanders, who so easily saw the urgency of the  
20 situation and who begged these defendants in desperation to  
21 please stop the killing of this helpless man in their  
22 custody and care.

23                  They chose not to intervene. They chose not to  
24 aid George Floyd, as the window in which Mr. Floyd's life  
25 could have been saved slammed shut. This is a crime. The

1 defendants are guilty as charged.

2 Thank you for your time.

3 THE COURT: Members of the jury, we're going to  
4 take a morning recess at this time. I would caution the  
5 members of the jury not to discuss the case amongst  
6 themselves or with other persons.

7 We are going to stand in recess now, so caution  
8 the jury that while you've heard the summation of one of the  
9 parties in the case, you have not heard the summation of the  
10 other parties and I therefore caution you to continue to  
11 keep an open mind.

12 With that, the jury may be excused.

13 **IN OPEN COURT**

14 **(JURY NOT PRESENT)**

15 THE COURT: Counsel, I stayed on. Ms. Magee just  
16 handed me a note saying that the jurors' lunches are here.  
17 I have no idea what they are having for lunch. I think  
18 they're cold lunches, so I don't think it makes much  
19 difference.

20 My suspicion is we should stay in recess for 10,  
21 15 minutes and come back in and hear your argument,  
22 Mr. Plunkett -- I'm sorry, I'm looking at Mr. Plunkett --  
23 and hear your argument, Mr. Paule, but if there's a  
24 compelling reason not to, we could put it over too.

25 MR. ROBERT PAULE: Your Honor, I don't really have

1           a preference. If the court would like me to go forward now  
2       or if the court would like to have the jurors hear the  
3       defense's arguments consecutive in the afternoon, I'm fine  
4       either way.

5           THE COURT: Ballpark, what's your time?

6           MR. ROBERT PAULE: Hour, hour and a half.

7           THE COURT: Okay. Maybe we should take our noon  
8       break at this time. Let's take a break until 12:30. We'll  
9       take a one-hour break today and we'll come back at 12:30.  
10      We'll have lunch and break now.

11      (Lunch recess taken at 11:32 a.m.)

12                                  \* \* \* \* \*

13      (12:31 p.m.)

14                                  **IN OPEN COURT**

15                                  **(JURY PRESENT)**

16           THE COURT: Welcome back, everybody.

17           Mr. Paule, I'll recognize you for summation.

18           MR. ROBERT PAULE: Thank you, Your Honor.

19           May it please the court.

20           THE COURT: Proceed.

21           MR. ROBERT PAULE: Counsel for the government.

22           Mr. Kueng, Mr. Plunkett, Mr. Lane, and Mr. Gray and you, the  
23       members of our jury. Good afternoon.

24           I again would like to begin my closing by  
25       acknowledging the death of Mr. Floyd. This tragic event is

1 what brings us here today. The loss of Mr. Floyd's life,  
2 like the loss of any human life, is a tragedy. However, a  
3 tragedy is not a crime.

4 I'd also like to take the opportunity to thank  
5 you, members of the jury, for your service, for the time  
6 that we've taken out of your lives. You've had to put your  
7 lives on pause to perform a civic duty, the long hours for a  
8 nearly month-long trial. I'd like to thank you for your  
9 time and your concentration and your sacrifice for being  
10 here.

11 It's important to acknowledge also that the rule  
12 of law must prevail, and what that means is in our society  
13 when we have disputes, they must be decided in a court of  
14 law. For these things to be decided out in the air of  
15 public media and opinion, on TV, that's not the way we, as a  
16 society, want to decide certain things.

17 As a brilliant legal mind once said, the rule of  
18 law must prevail. And what that means is to decide an issue  
19 as important as what we're doing here today, it must be done  
20 in a courtroom with the rules of evidence and an independent  
21 group of people who are picked to decide what has or has not  
22 been proven, and that is your role as a jury in this case.

23 We talked about it at the outset. This is  
24 obviously Judge Magnuson's courtroom. He is in charge of  
25 this courtroom. He is what is referred to as a judge of the

1 law. Among his many duties, his job is to instruct you on  
2 what the law is and what it is not.

3 You, as the jury, as a group are considered the  
4 judges of the facts. And what that means is that you, as a  
5 group, will decide what facts have been or have not been  
6 proven in this courtroom. That is your role as a group as  
7 the judges of the facts.

8 Your duty is to then take the facts as you decide  
9 them and apply the law exactly as the court gives it to you  
10 and render a just and true verdict, and it's important that  
11 you are allowed to do this in an atmosphere that makes you  
12 make your decision free from any sympathy or any bias.

13 Now, it's essentially the right to a jury trial  
14 that sets our legal system in our country apart from  
15 virtually any other. We are essentially the only legal  
16 system that allows a group of citizens to come together with  
17 no bias either way, no skin in the game to make a decision  
18 what has and has not been proven, and that's one of the  
19 cornerstones of our legal system.

20 I'm going to discuss also at this point sort of  
21 three bedrock legal principles of criminal law, and these  
22 principles used together will give you the framework that  
23 you need to act in your proper function as a jury to analyze  
24 the evidence in this case. The first principle I'm going to  
25 talk about is the presumption of innocence.

1                 Now, the court will give you -- I'd like to start  
2                 out by pointing out the court will give you legal  
3                 instructions. It's my understanding you will get a packet  
4                 of these instructions. You can bring them with you back to  
5                 the jury room.

6                 And I want to point out at the outset if I in any  
7                 manner state the law which is different than what Judge  
8                 Magnuson gives it to you, you should disregard what I've  
9                 said about the law and rely solely on the law as he gives it  
10                 to you, because that is what is proper in this case.

11                 But I want to talk to you about these three legal  
12                 principles, the first one being the presumption of  
13                 innocence.

14                 My client in this case -- and, by the way, I'd  
15                 like to point out at this point I'm only going to talk about  
16                 one particular lawsuit, as the court puts it, because right  
17                 now in this courtroom you have three people standing trial,  
18                 but I only represent Mr. Thao and my comments should only be  
19                 taken in consideration of the case of the United States of  
20                 America vs. Tou Thao.

21                 So in this case I'm going to talk about the  
22                 presumption of innocence. My client, like anyone in America  
23                 charged with a crime, is presumed to be innocent. And ask  
24                 yourselves: What does it really mean to be presumed to be  
25                 innocent? Well, it means many things, as I tell my clients.

1                   It means, first of all, a jury has to presume your  
2 innocence to every element and every aspect of the case.  
3 Simply because the government has chosen to bring charges  
4 against a person is of no import. Those are merely  
5 allegations.

6                   The jury's role is to presume that a person is  
7 innocent of the charges against him. And as you will hear  
8 Judge Magnuson tell you, the presumption of innocence alone  
9 can be sufficient to justify a not guilty verdict.

10                  Now, going to what I tell my clients, is when a  
11 person is presumed to be innocent, it means many things. It  
12 means again, first of all, the jury must look at you as if  
13 you are innocent of these charges.

14                  And that presumption of innocence maintains with  
15 you and stays with you until the end of a trial when a jury,  
16 acting as a group, comes to a decision that the government  
17 has proven you guilty, it has overcome the presumption of  
18 innocence.

19                  But the presumption of innocence means much more  
20 than that. It means that there is no burden whatsoever on a  
21 defendant. He is under no duty to present any evidence  
22 whatsoever. He is under no duty to call any witnesses.  
23 He's not even under any duty to question the government's  
24 witnesses. Because he is presumed to be innocent, the  
25 burden of proof is entirely on the government.

1                   The final thing about the presumption of  
2 innocence, it means that my client is not under any duty to  
3 testify at all. One of the constitutional rights guaranteed  
4 everyone is the right to remain silent.

5                   And how that comes into play in a court trial is  
6 if a person exercises their right to remain silent, it means  
7 they don't have to testify. That is part of the presumption  
8 of innocence in this case.

9                   So at the outset you, as a jury, must view my  
10 client as innocent of these charges.

11                  The second legal principle I want to talk about is  
12 the burden of proof. In this case, like any criminal case,  
13 the burden of proof is solely on the prosecution. Again,  
14 the presumption of innocence stays with my client unless and  
15 until the government can meet their burden of proof. In  
16 other words, there is no duty for my client to prove his  
17 innocence. Instead, the burden of proof is entirely on the  
18 government, just like it is in every courtroom throughout  
19 the United States of America.

20                  The third concept I'd like to talk about is proof  
21 beyond a reasonable doubt. And let me rephrase that so you  
22 can be very clear about how I'm discussing this and what I  
23 am saying. The phrase is "proof beyond a reasonable doubt."

24                  Now, the court in its instructions to you will  
25 give you the definition of what "proof beyond a reasonable

1       doubt" is. And I'm not going to go over that when I talk  
2       about these principles. Instead, I'm going to talk about  
3       the concept of proof beyond a reasonable doubt or, as I like  
4       to refer to it when I'm speaking to my clients, proof beyond  
5       all reasonable doubt.

6                 Now, what you will hear in the instructions on  
7       proof beyond a reasonable doubt is that it does not mean  
8       beyond all possibility of doubt. It simply means proof to a  
9       point where there is no reasonable doubt.

10               And this is where you, as a jury, we want you to  
11       bring your reason and common sense into the equation. We  
12       selected you because presumably we thought, A, you were  
13       neutral, but, two, that you were reasonable people and  
14       possessed the common sense that we want in people to make  
15       decisions in a case like this.

16               But what proof beyond all reasonable doubt means,  
17       at least to me in a concept -- and, again, if this is in any  
18       way different than what Judge Magnuson tells you the law is,  
19       please disregard what I say because I'm talking about the  
20       concept.

21               Proof beyond all reasonable doubt means just that.  
22       It means proof to a point where at the end of the case there  
23       is no rational, reasonable, logical explanation for what the  
24       evidence is in court other than a person is guilty.

25               At one point in my career I was arguing that same

1 point and I was objected to by the prosecutor, and the  
2 prosecution's objection was that they don't have to prove it  
3 beyond all reasonable doubt, they only had to prove it  
4 beyond a reasonable doubt. And upon expressing that, the  
5 prosecutor quickly realized: What am I saying? Mr. Paule  
6 is right.

7 So the burden on the government in this case is to  
8 prove their case to a point called proof beyond a reasonable  
9 doubt. And, again, follow the judge's instructions on that.  
10 But that means the burden of proof is on them to proof the  
11 charges against my client, and in this case there are two.

12 He is charged with violating the United States  
13 Constitution in two fashions. One is Count 2, which is a  
14 failure to intervene. In other words, he violated his duty  
15 to intervene when he's confronted with unreasonable force.  
16 The allegations are that the force used by then Officer  
17 Chauvin was unreasonable under the circumstances and my  
18 client failed to intervene. That is Count 2.

19 Count 3 is an entirely different function.  
20 Count 3 alleges that my client violated the Constitution by  
21 exercising or using deliberate indifference to Mr. Floyd's  
22 serious medical needs.

23 And if you think about both of these charges, my  
24 client isn't really charged with doing anything. He's  
25 charged with the exact opposite. He's charged with not

1                   doing something.

2                   And the important thing for you, at least in my  
3                   thought process in terms of your analysis, is I think it's  
4                   pretty clear what my client did do. I think the evidence in  
5                   this case is relatively clear.

6                   As sort of the use of technology has changed, we  
7                   oftentimes have video footage or recordings or much more  
8                   forensic evidence than we used to have. And this case  
9                   provides perhaps the clearest example of that in the sense  
10                  that we have a tremendous amount of video which shows what  
11                  did or did not happen.

12                  And at least my position is I think that it's  
13                  pretty clear what did or didn't happen. But the important  
14                  question for you to consider is why because, again, what the  
15                  government has to prove isn't just, A, as to Count 3, that  
16                  my client was deliberately indifferent to the serious  
17                  medical needs of Mr. Floyd, but that he had what's called a  
18                  specific intent to do so.

19                  And let me explain this. What the government  
20                  needs to prove isn't just that Mr. Floyd had a medical need.  
21                  It's that Mr. Floyd had a serious medical need that would be  
22                  obvious to people, recognizable. That also takes into  
23                  account the particular facts and circumstances, which I will  
24                  talk about later.

25                  But, again, what they need to prove is they need

1 to prove he had serious medical needs. And then the  
2 government needs to prove that my client was not only aware  
3 of those serious medical needs, but that he chose to be  
4 indifferent to them.

5 And if you look at the charge itself, it requires  
6 not just indifference; it requires something called  
7 deliberate indifference. And "deliberate indifference"  
8 means, at least to me, that you recognize that there is a  
9 serious medical need and you choose not to act and you do so  
10 deliberately.

11 But if you look at what the elements of this are,  
12 not only is the government required to prove that and prove  
13 that beyond all reasonable doubt, but they also have to meet  
14 the additional element of willfulness.

15 And if we could put up on the screen -- you will  
16 get, again, a copy of the definition of "willfulness" in  
17 your instructions, but the important word is the word  
18 "willfully" or "willfulness."

19 And if you look at what this says, it says,  
20 "Willfulness. A person acts willfully when they commit an  
21 act with a bad purpose or an improper motive."

22 In other words, getting to my argument about this  
23 deliberate indifference count, they not only have to prove  
24 that Mr. Floyd had a serious medical need, but that my  
25 client was aware of it, that he chose to be indifferent,

1       that he chose so deliberately and that he did so with this  
2       element of willfulness, which means not only do you say,  
3       well, maybe I'm just going to choose to be indifferent and  
4       not just indifferent but deliberately, but I have to possess  
5       the specific intent of violating the law.

6                 Now, when we talk about what the law is with  
7       regard to this element of willfulness, it's essentially to  
8       violate the Constitution. And as you will find out, a  
9       person doesn't need to be specifically aware that they're  
10      violating the Constitution, just that they are breaking the  
11      law. That is what willfulness needs and they need to  
12      establish.

13               Now, with regard to Count 2, the failure to  
14      intervene, again, it requires a number of steps and the  
15      government has to prove all of these steps beyond a  
16      reasonable doubt.

17               They have to prove, first of all, that Mr. Chauvin  
18      was using unreasonable force. And that unreasonable force  
19      has to be what's called objectively unreasonable force, and  
20      what that means is not just is it unreasonable, but a  
21      reasonable person or an objective person would decide that  
22      that is unreasonable force.

23               And then knowing that, the person has to, A, have  
24      a duty to intervene, which I'm not contending that then  
25      Officer Thao did not have. He was a sworn officer. They

1 have a duty to intervene if they see unreasonable force  
2 being used. But they have to fail to act upon that duty.  
3 And, again, this requires a very specific intent. I'll  
4 explain to you a little bit about intent versus specific  
5 intent.

6 If you think about it in general terms, let's say  
7 I take pills every day, a number of pills. I have one of  
8 those nice little weekly things with my pills in it. At the  
9 end of a week I say I need to get more pills or I need to  
10 fill up my thing. I make a point of filling up my pill  
11 container so I can take those pills every day. I am doing  
12 an intentional act to do that.

13 But my purpose in doing that intentional act is to  
14 take those pills so that I can theoretically be a healthy  
15 person. I not only intend to take the pills, but my  
16 specific intent is to make myself healthier.

17 In this case what the government has to prove with  
18 the failure to intervene charge is the specific intent of  
19 willfulness, which, again, means that not only is my client  
20 accused of failing to intervene when there's  
21 reasonably -- excuse me, objectively unreasonable force, but  
22 that my client did so with the specific purpose of  
23 willfulness, which means a bad purpose or an improper  
24 motive. This is what the government needs to prove beyond a  
25 reasonable doubt.

1           If we could now take that down.

2           What this means in some sense is that even if you,  
3           as a jury, once you've decided the facts, come to the  
4           conclusion that perhaps Mr. Thao's actions weren't the right  
5           course of action, they still must be done with the specific  
6           purpose of a bad purpose or an improper motive. In other  
7           words, I'm not only choosing to take the actions that I'm  
8           doing, or the inactions, but that I'm doing so to  
9           specifically violate the law. That is what the charges are  
10          against my client and that is what is required of the  
11          government to prove.

12          Now, let's look back to the actions of May 25th,  
13          2020, Memorial Day. It was a Monday about 8:00 p.m. At that  
14          time of day my client was partnered with Officer Chauvin for  
15          the day, and the two of them were back at the Third Precinct  
16          having their lunch break. It's an odd time to have lunch,  
17          but if you are working middle watch, that makes sense.

18          They're at the Third Precinct when they receive a  
19          dispatch requesting them to respond to Cup Foods, which is  
20          located at 38th and Chicago. The information provided to  
21          them was that someone was trying to pass a counterfeit bill  
22          or a forgery; two, that the suspect was still on the scene,  
23          which turns this into what's called a priority call, if you  
24          remember that, because if the suspect's still on the scene,  
25          they want officers to respond quickly so they can

1           theoretically detain that person and investigate the  
2           situation; and, third, that the person was under the  
3           influence of either drugs or alcohol. That's what these  
4           officers knew when they were sitting there having lunch.

5           So they get into the car and as you can see from  
6           my client's body camera footage -- and, again, as an aside,  
7           if you look at my client's body footage, there are actually  
8           four separate videos.

9           The first one shows the initial response when the  
10          car was leaving the Third Precinct. You can see the lights  
11          and sigh reasons bouncing off things. And then you can see  
12          them going slow and talking.

13          And the second video is the one that starts when  
14          they are arriving at the scene of Cup Foods, but in this  
15          first video you can see that my client and Officer Chauvin  
16          are responding Code 3. They're responding lights and sirens  
17          to that specific dispatch. All right?

18          And think about this. The next thing they know is  
19          that Squad 320, which is the squad with the two rookie  
20          officers, Officers Kueng and Lane, responds because the call  
21          at Cup Foods was in their particular sector and they should  
22          be responding within their sector to calls. So they  
23          essentially take over the call and then they arrive at Cup  
24          Foods and they call out a Code 4, which means the scene is  
25          safe.

1                   Instead of turning around and going back to the  
2 Third Precinct to have their lunch, they continued on.

3                   Think about how Mr. Thao's life would have been different if  
4 he just decided to go back and have his lunch.

5                   But instead they continue to respond to the scene  
6 to provide backup for the other officers. And think about  
7 the evidence you've heard about which car theoretically is  
8 assigned to a scene and who is in charge.

9                   But they go there to provide backup to the  
10 officers in Squad 320. And why do they do that? Because,  
11 one, it's a couple of rookies who have been paired together.  
12 Secondly, this is the area you heard my client or you --  
13 when you listen to the video, the first one of the four on  
14 his body cam, you can hear him say, "This is Bloods  
15 territory." Again, he's referring to a specific Minneapolis  
16 street gang that's sort of headquartered in that area.

17                   But the idea is that this is an area that might be  
18 a little more hostile to police than perhaps other areas,  
19 and my client expressed concern because he didn't know that  
20 the rookies would necessarily be aware of that.

21                   And then as they're on their way they hear, I  
22 believe -- and, again, this is an important concept.  
23 Lawyers can spend hours, days, even months analyzing a case  
24 and figuring out what we think the evidence is. That's true  
25 of me in the case of United States vs. Thao, but it's also

1 true of the government with all of their lawyers. You get  
2 to decide what the facts really are. So if my recollection  
3 of the facts is different than what you as a jury think, go  
4 with your recollection of the facts.

5 But my recollection of the facts is they receive  
6 word that they're taking one out, which means a police  
7 officer is removing someone from a car, and then there's  
8 some sort of indication of a struggle. And I'm not sure  
9 whether this comes from dispatch or whether it's what my  
10 client overheard. But they continue to go there to provide  
11 backup to these other two officers.

12 Now, when they arrive on the scene, as you see  
13 them pull up you will see them coming to Cup Foods to  
14 Chicago Avenue heading west on 38th Street. And as they  
15 cross over Elliot, which is the street one block east of  
16 Chicago Avenue, on 38th Street they pull over to the  
17 left-hand side of the road.

18 The left-hand side of the road is where the blue  
19 Mercedes SUV is. It's also where Officer Chang, the  
20 Minneapolis Park Police officer, has parked his vehicle,  
21 because Officer Chang has likewise responded to the call for  
22 backup that there may be a struggle.

23 And as my client and Officer Chauvin pull up to  
24 the left-hand side, you heard my client testify that he did  
25 so because he could see Officer Chang out with two people,

1 so there's a numeric disadvantage.

2                   But then you will hear and you will see on the  
3 body camera the car then go to the right to the north side  
4 of 38th Street and park just east of Chicago Avenue, and  
5 that's sort of when the sound clicks in on my client's body  
6 camera on that second round of footage on his body cam.

7                   But you will see in that Officer Chauvin gets out  
8 first, and Officer Chauvin is walking ahead of my client and  
9 arrives at Squad 320 first. And when my client actually  
10 arrives at Squad 320, Officer Chauvin is already over on the  
11 far side of Squad 320. So my client is observing, as he  
12 walks up, Officer Kueng struggling with George Floyd, who is  
13 in handcuffs.

14                  And, again, an important thing to keep in mind is  
15 that you must judge the actions of my client, Officer Thao,  
16 based on what the facts and circumstances were known to him  
17 at the time.

18                  The law in this case talks about, you know, you  
19 shouldn't look at the actions of an officer in 20/20  
20 hindsight. You have to, to be fair, look at them from what  
21 my client knew at the time he was doing it.

22                  Now, when my client arrives, he doesn't know much  
23 about what has already occurred. The interactions with  
24 Officer Lane and Officer Kueng over at the side of the  
25 Mercedes SUV after Mr. Floyd was removed from the car, the

1 struggle that occurred between Officer Lane and Mr. Floyd  
2 and then joined by Officer Kueng, who helped to handcuff  
3 him, and then walking Mr. Floyd over and having him seated  
4 by the side of the Dragon Wok restaurant and then escorted  
5 over to Squad 320 in front of Cup Foods, my client doesn't  
6 know those things.

7 What he knows when he's arriving is Officer Kueng  
8 is struggling with a handcuffed man, who is a large man, and  
9 this person is resisting getting in the back of the car.  
10 That is what's referred to as active resistance.

11 And you can -- you heard my client testify about  
12 this, that, A, he didn't physically touch Mr. Floyd at this  
13 time, that he actually never touched Mr. Floyd during the  
14 entirety of this event, but that he's observing as Officer  
15 Kueng is trying to place Mr. Floyd in the back of the car  
16 for sort of reasons unknown to my client.

17 And what does he observe as he's doing this? He  
18 can see Officer Kueng shoving and he can see Mr. Floyd  
19 stiffening up, which makes it difficult to place him in the  
20 back of the car, but there's a struggle and you can see on  
21 his body cam he's looking around trying to see what's going  
22 on.

23 You can see at one point Officer Kueng putting his  
24 forearm sort of up against Mr. Floyd's chest, upper chest  
25 area, and it may well have been moving up to his neck, but

1 at that point my client can see and hear Mr. Floyd say, "I  
2 can't breathe."

3 And think about that, because at that point my  
4 client doesn't know what's gone on before this. And there's  
5 nothing that would inhibit Mr. Floyd's breathing at that  
6 point. His testimony was that Mr. -- excuse me, Officer  
7 Kueng's arm was sort of in the upper chest area. That is  
8 not going to cause somebody to not be able to breathe.

9 Think back to what my client testified about his  
10 own experience with people who are going into custody or in  
11 custody claiming that they can't breathe under circumstances  
12 where clearly they should be able to breathe.

13 At that point then Mr. Floyd ends up inside the  
14 car. I believe -- and you as the jury get to determine  
15 this -- that Officer Lane may have gone around and helped  
16 pull Mr. Floyd into the car.

17 And then he sees Mr. Floyd sort of eject himself,  
18 even while he's handcuffed with his hands behind his back,  
19 out of Squad 320 and onto essentially Chicago Avenue on the  
20 passenger side of the vehicle.

21 My client then goes around the vehicle. And you  
22 will see from his body camera footage that as he goes around  
23 the vehicle, Officer Kueng has gone around the vehicle  
24 first. And when he goes around the corner, he can see  
25 Officers Kueng, Chauvin, and Lane engaged in a struggle with

1                   Mr. Floyd.

2                   And think about this. You've got one person who  
3                   is handcuffed with his hands behind his back who is actively  
4                   resisting, who is trying not to go in the squad car and is  
5                   not listening to commands by the police officers to get in  
6                   the car. Yet that one person is able to sort of out-muscle  
7                   or overpower those three officers.

8                   My client then goes back around to the driver's  
9                   side of Squad 320 and opens the door up, standing there, I  
10                  think, waiting to assist the other officers when they put  
11                  Mr. Floyd in the back of the car to act, as he described it,  
12                  as a puller, to help pull Mr. Floyd back in the car.

13                  And you see on his body camera footage at this  
14                  point Officer Chauvin has taken over command of the struggle  
15                  and you will again see Mr. Floyd saying, "I can't breathe."  
16                  And I'll leave it up to you to decide what the evidence is,  
17                  but at some point you can see Officer Chauvin behind  
18                  Mr. Floyd with his arm around, and it's not around his neck,  
19                  it's lower down, but Mr. Floyd is again saying, "I can't  
20                  breathe." Are those circumstances that would lead you to  
21                  believe that he reasonably couldn't breathe or maybe is he  
22                  doing something else, feigning, exaggerating for whatever  
23                  purpose?

24                  But at that point, then they sort of all end up  
25                  outside of the squad. And my client will close the squad

1           door on the driver's side and he goes around the side of the  
2           car.

3           And if you listen to his body camera, that's when  
4           he makes the phrase about hog-tieing or something like that,  
5           because what he testified to is he tries to almost narrate  
6           to use the body camera as a means of sort of recording or  
7           providing some sort of memorialization of what he was  
8           thinking and why.

9           And he testified that he was thinking that because  
10          you've got three officers that can't control someone. And  
11          he's also thinking, as he testified, there's a limited  
12          amount of time when people can physically struggle. It sort  
13          of becomes a point where they're exhausted.

14          So as he's walking around the side of 320 to go  
15          back again where the other three officers and Mr. Floyd are,  
16          he's already coming to the conclusion that what they're  
17          doing isn't working. And think about that; three officers  
18          are not able to control a person in handcuffs.

19          So when he gets around to the side of the car, he  
20          can see them struggling. He can hear Mr. Floyd saying,  
21          "Just put me on the grouped." So my client says to himself  
22          this is pointless and he says, "Let's just put him on the  
23          ground." At that point Mr. Floyd is put to the ground.

24          Now, as an aside, in my opening statement I talked  
25          about the use of force. I talked about how the use of force

1       is sometimes difficult to watch. And think about some of  
2       the evidence we've had in this case about the use of force,  
3       including some of those restraint videos from 2017 where the  
4       recruits are being taught to try to take down a person who  
5       is wearing a padded suit. Even in that controlled  
6       environment, the use of force is difficult to watch, it is  
7       violent, it is graphic, and it is up close and personal.  
8       And use of force is not only difficult to watch at times,  
9       but it can be difficult to comprehend what is going on and  
10      why.

11                  Now, getting back to this instance, Mr. Floyd is  
12       put on the ground and you can see the other three officers  
13       go down with him, Officer Chauvin by his head area, Officer  
14       Kueng near his derriere, as I think it's been called, and  
15       Officer Lane at his feet. And at this point you hear a  
16       discussion about a hobble or what's called an MRT.

17                  Now, just to be clear, the MRT is a maximum  
18       restraint technique. It is essentially where you use a  
19       hobble or a strap to wrap around a person's ankles.

20                  And I believe since the Freddie Gray case that we  
21       heard some testimony about where a person was injured and  
22       died in the back of a police van when they were hobbled, the  
23       Minneapolis Police Department policy has changed where now  
24       they want to use two hobbles, one to wrap around a person's  
25       ankle, the second is to tie that hobble, the first one, to

1           the belt loop or the belt independent of the handcuffs. But  
2           the idea is to put a person in a position where they can  
3           struggle, but they're just struggling against themself.

4                 So there's a discussion about that. And then my  
5           client goes to the back of Squad 320, because he's standing  
6           right there, opens up the rear hatch and begins looking  
7           through two black bags. These are what are referred to  
8           oftentimes as duty bags for the officers. They keep things  
9           that they think they may have to use in those bags.

10               Now, Ms. Sertich and the government during the  
11           course of this trial has tried to claim that my client spent  
12           the first six minutes standing there staring at Mr. Floyd  
13           and what was going on.

14               In my humble opinion, they're playing sort of fast  
15           and loose with the facts, because you can see my client go  
16           around to the back of Squad 320 and search purposely for a  
17           hobble in the back of the car.

18               Are we able to turn that off? Thank you.

19               And he can't find one in the first bag, which I  
20           think you realize is Officer Kueng's bag, so he goes over to  
21           the second bag. And you can hear Officer Lane saying, "I've  
22           got one in my bag." And when he flips it up, sure enough,  
23           you can see it says, "Hobble," so he grabs the strap out of  
24           there.

25               Notice, if you will, where my client's attention

1       is. Because if you look from his body camera footage, you  
2       will see a reflection and you can see my client. And this  
3       is obvious; he's looking in the bag for the hobble.

4                   So he gets out this hobble device, this strap, and  
5       goes back around to the side of the car and gives it to  
6       Officer Chauvin. Officer Chauvin then gives it to Officer  
7       Lane. I'm not sure if Mr. Kueng handled it. I'll let you  
8       guys figure that out. But there's then a discussion about  
9       whether we should be applying the hobble.

10                  Now, what we know is if the hobble is applied,  
11       then Mr. Floyd is not needed to be held in that prone  
12       position. But the discussion of the hobble -- and just as  
13       an aside, the way the arguments are set up procedurally is  
14       that the government gets to go first with their closing  
15       argument. Then I, on behalf of my client, I'm entitled to  
16       give a closing. And then the government is afforded a  
17       rebuttal, so sort of a second closing argument,  
18       theoretically to just try to rebut the things that I've  
19       said.

20                  So they may talk about this and they may try to  
21       direct your attention to the fact that my client said if we  
22       put a hobble on, we'll have to get a sergeant out. And this  
23       is -- you could attribute that statement to a number of  
24       different things.

25                  One, it could be, as the government no likely will

1 try to point out, that my client was just simply being lazy.  
2 We have to get a sergeant out here. We have to explain all  
3 this.

4 But the reality is when police officers use force,  
5 under Minneapolis policy they have to have a sergeant come  
6 out and review that use of force -- you heard my client  
7 testify about we'll have to take pictures, because he's had  
8 that happen -- and look at the hobble.

9 Now, putting that aside, my client also knows at  
10 this point that EMS has been called. And if you recall, at  
11 this point EMS has been called Code 2. And what that means  
12 is respond directly, but you don't need to use your lights,  
13 you don't need to use the siren, you don't need to run.  
14 Just get here as quickly as possible. So he already knows  
15 EMS is on the way.

16 And what does he also know at this point? You  
17 heard my client testify that in his interactions with  
18 Mr. Floyd, he believed him to be high or under the influence  
19 of drugs. And if that is indeed the case, if somebody is  
20 under the influence of drugs, then it becomes a medical  
21 issue. And since EMS is on their way, they're going to have  
22 to decide that.

23 Now, as an aside, I would point out that if you  
24 think about the four people who have come into this  
25 courtroom and testified who directly interacted with

1                   Mr. Floyd on May 25th, all of them suspected that Mr. Floyd  
2                   was under the influence of drugs.

3                   First of all, Chris Martin, the young employee  
4                   from Cup Foods. He was the person that took the counterfeit  
5                   bill from George Floyd. And he indicated that he held it up  
6                   and he didn't know what to do, and he thought George Floyd  
7                   might be so high that he didn't realize he'd passed a  
8                   counterfeit bill.

9                   But then he went out and interacted with him, not  
10                  once, but twice, as he was trying, at the direction of his  
11                  manager of the store, to bring Mr. Floyd back in to deal  
12                  with the situation of the counterfeit bill. And when they  
13                  called 911, he was standing right there and heard the person  
14                  say we think he's under the influence of something.

15                  Now, think back to what Mr. Martin said when he  
16                  testified early, early on in this case. When he was talking  
17                  with him, he felt that Mr. Floyd was high. He said he was  
18                  reacting slowly to some of the words and had difficulty  
19                  forming the word I think it was baseball. But his direct  
20                  impression, as he testified to, was that George Floyd was  
21                  high or under the influence of drugs.

22                  The second person who interacted with Mr. Floyd  
23                  was Officer Lane. Officer Lane's testimony is that he, too,  
24                  believed that Mr. Floyd was under the influence of drugs.  
25                  You heard him asking have you been taking drugs, something

1 like that, and going over to talk to Shawanda Hill and  
2 Morries Hall, who were the two other occupants of the blue  
3 SUV, asking them what's going on with him, why is he  
4 behaving like this.

5 And then when he goes over and they pick him up  
6 and start escorting him across the street when he's asking  
7 him about has he be doing drugs, well, first of all, George  
8 Floyd denied that, which we now know was false. And second  
9 of all, if you listen to it, George Floyd says, "I was  
10 hoopin' earlier." And, again, I brought that up in my  
11 opening statement and told you to pay attention to that.  
12 Hoopin', as we now know, can be used to describe when  
13 someone is taking drugs rectally.

14 Then you look at Officer Kueng. Officer Kueng  
15 came over to help handcuff Mr. Floyd and walk Mr. Floyd over  
16 to the Dragon Wok. He said on the way there Mr. Floyd  
17 dropped down or sort of fell down, not once, but twice,  
18 which could be indicative of somebody on drugs. He too  
19 noticed the erratic behavior of Mr. Floyd and he was asking  
20 him, "Are you on something?" He also noticed foam around  
21 his mouth.

22 And think to the inside of Squad 320 when it would  
23 be the special agent from the BCA, McKenzie Anderson,  
24 testified. She was the person from the BCA crime scene team  
25 who came out and documented what was inside both the blue

1           SUV and the Squad 320. And she documented a number of blood  
2        stains in the rear of Squad 320, including one high up sort  
3        of on the seat right by the passenger side door.

4           And do you remember looking at that and her  
5        making -- her agreeing with my comment that that could be  
6        consistent with somebody who is bleeding out of their nose,  
7        having their face pushed up against it? Because it looks  
8        like there's a nose print and two what could be lips.

9           And then right off to the side of it was some  
10       white residue that was never tested. That would also  
11       confirm the foam around the mouth, assuming that hypothesis  
12       is correct.

13           So you have Officers Lane and Kueng and Chris  
14       Martin all believing that George Floyd is high on drugs, and  
15       then you have my client. And my client, going back to the  
16       point where Mr. Floyd is down on the ground, they're trying  
17       to figure out what to do, do you remember my client saying,  
18       "What are you on?" At that point then my client starts  
19       asking, "We have EMS started, correct?" What are we -- and  
20       I'll leave this up to you, but it's my recollection that  
21       Mr. Lane, then Officer Lane, said, "We've got EMS coming,"  
22       which is the paramedics, "Code 2."

23           And then there's a suggestion of stepping it up to  
24       Code 3, and then my client called into dispatch on his radio  
25       to step up EMS's response to Code 3. They didn't do that

1 for a bad purpose. They did that to get EMS there quicker,  
2 because they realized that at this point they had some sort  
3 of a medical situation developing.

4 And when you have somebody who is -- who you're  
5 detaining who is in some sort of a medical situation, that  
6 has to be dealt with by medical people, like EMS. So at  
7 this point my client knows they're not going to put him in  
8 the back of the squad and bring him to the jail; they're  
9 going to hold him until EMS shows up.

10 Now, I would also point out a couple things. One  
11 is, again, and I'm not trying to demean Mr. Floyd in any  
12 way, but Mr. Floyd clearly wasn't being honest when he said  
13 he wasn't on drugs. We now know he was on drugs for a  
14 couple different reasons.

15 One is the toxicology results that Dr. Baker and  
16 others have talked about. He had both methamphetamine and  
17 fentanyl in his system.

18 Secondly, the second search of the Mercedes SUV  
19 resulted in the discovery of two pills that were in the  
20 center console, both of which were tested, both of which  
21 were determined to have both methamphetamine and fentanyl as  
22 what was in them.

23 And then you've got the search of Squad 320, the  
24 second search, that turned up the little white pill down on  
25 the floor by that center barrier and some other pill

1           fragments that had been left during the course of the first  
2           search. And we know that that pill, the round pill, whether  
3           it was whole or not, down on the floor of Squad 320  
4           contained methamphetamine and fentanyl.

5           And additionally we know that that pill was  
6           actually tested, determined to have George Floyd's saliva on  
7           it and George Floyd's DNA. So that would lead a reasonable  
8           person, using their common sense, to believe that that came  
9           from George Floyd's mouth.

10          So we know that, in fact, he was having narcotics  
11         in his system. That is consistent with the observations of  
12         all four of these people.

13          Now, you heard testimony about excited delirium,  
14         and I'd like to talk to you about that, because, if you  
15         recall, all three of the officers, independently and perhaps  
16         for different reasons, came to the conclusion, at least to  
17         them, that they believed Mr. Floyd was in excited delirium  
18         syndrome.

19          As an aside, let's step back. We know that Derek  
20         Smith said, when he was questioned, that based on what he  
21         knew about the call, he suspected that there may be excited  
22         delirium.

23          And when I talked to him about excited delirium,  
24         he said, yes, this isn't something that a lawyer made up.  
25         This is something that he's seen that he's interacted with

1           with people in his job as a paramedic.

2           You also heard testimony from Dr. Langenfeld.

3           He's the emergency room doctor that attempted to revive  
4           George Floyd at HCMC. He's seen people in excited delirium.

5           You heard Dr. Baker say that he's dealt with  
6           excited delirium, he's familiar with it, and he's actually  
7           certified as a cause of death excited delirium.

8           This is not something that's made up. It's  
9           historical. It goes back to different things referred to as  
10          Bell's mania, agitated delirium, all kinds of things. It is  
11          a concept that has much conflict about whether or not it's a  
12          real syndrome or what it is, but you know that it's not  
13          something that's made up and you know that my client and the  
14          other officers were trained on it.

15          And if you look at it, all three of the officers  
16          came to their own independent conclusion that Mr. Floyd  
17          might be in the throes of excited delirium and that's what  
18          they were trying to deal with here.

19          What do we know about why that was? My client  
20          testified that, in his observations of Mr. Floyd, that  
21          Mr. Floyd was sweating profusely, and this is when he's  
22          arriving at the car before he's gone over to the far side;  
23          that Mr. Floyd was agitated and not following instructions.

24          He believed that George Floyd was under the  
25          influence of drugs. I believe his testimony was it was

1       obvious he was high; and, secondly, he said that he heard  
2       George Floyd say, "I ate too many drugs" when he's down on  
3       the ground on the side of Squad 320.

4                 Also his testimony was that this was the most  
5       violent struggle he's ever seen with somebody in handcuffs.  
6       And think about this. You've got a person with his hands  
7       handcuffed behind his back, which limits the use of his  
8       arms, yet that person was able to physically resist not one,  
9       not two, but three officers who were trying to get him in  
10      the back of the car. These are officers who are trained at  
11      things like pain compliance, various techniques to do this,  
12      and yet they couldn't get him in the back of the car and  
13      contain him in there. That goes to the idea of super-human  
14      strength.

15               And if you look at the other three officers and  
16      what their testimony is, why they believe this, if you look  
17      at Officer Kueng, he testified that, A, he believed George  
18      Floyd was on drugs; B, that George Floyd was foaming at the  
19      mouth; C, that he was sweating profusely; D or four, that he  
20      had an attraction to glass. You heard Officer Kueng testify  
21      about George Floyd striking his face on the glass partition,  
22      not once, but twice. And then, third, that he was -- excuse  
23      me, fifth, that he was exhibiting super-human strength in  
24      terms of his ability to resist being put in the car and his  
25      resistance on the ground.

1                   Officer Lane also testified, and you actually hear  
2 him say that when he's on the scene, "I'm worried about the  
3 excited delirium or whatever." Well, maybe he's just making  
4 it up, but let's look at the objective reasons he may well  
5 have believed that.

6                   I believe Officer Lane testified, apart from  
7 his excited -- excuse me, his comment about the excited  
8 delirium on the video, that he believed that Mr. Floyd was  
9 on drugs, and you can see that from his earlier comments  
10 going back as far the Dragon Wok; that Mr. Floyd was  
11 sweating profusely; that he had a very strong, super-human  
12 almost level strength; and I don't want to put my  
13 descriptive words on that, but he described Mr. Floyd as not  
14 being able to come under control, they weren't able to put  
15 him in the side of the squad; and that also that he had  
16 banged his face on the glass partition.

17                  And if you think about this, you think about the  
18 training the officers received, that NOTACRIME, I'd like to  
19 go through some of those. And I have to step away from the  
20 microphone, so I'll speak loudly for our court reporter, but  
21 I'd like to put some things up here to see whether or not  
22 the officers' beliefs or understandings are actually borne  
23 out by the training they received.

24                  Now, what I'm going to do is I'm going to refer to  
25 Exhibit T-12. There's another exhibit number, but it's the

1       PowerPoint presentation that was given at the Minneapolis  
2       Police Department in terms of training, both at the police  
3       academy and as well in the in-service training.

4                  You heard Inspector Blackwell talk about this and  
5       you heard them use the word "NOTACRIME." It's an acronym or  
6       a group of symbols to allow people to remember this in  
7       situations.

8                  And if you look at slide 16, it says, "NOTACRIME  
9       is a mnemonic used to remember specific clues or behaviors  
10      we," training police officers, "can use to identify excited  
11      delirium syndrome subjects."

12                  And then 17 just has a video.

13                  But then slide 18, the first one is "N." "Patient  
14      is naked and sweating." And it shows one of the videos you  
15      could see of a person that was naked. Now, the government  
16      has taken pains to point out that George Floyd wasn't naked,  
17      and I'm not claiming he was. First of all, he's in  
18      handcuffs. He can't take off his clothes. But "N" stands  
19      for is naked and sweating. Think about the testimony from  
20      all three officers about Mr. Floyd sweating profusely.

21                  Going then to slide 20, the "O." "Not," n-o.  
22      "Patient exhibits violence against objects." And if you  
23      think about the second bullet point there, high likelihood  
24      that glass is targeted. The glass partition in between the  
25      front and back seats of Squad 320.

1                   Then there's another video, which we won't show  
2 you again.

3                   The "T" stands for "Patient is tough and  
4 unstoppable." Three officers not able to control a person  
5 in handcuffs such that they can even put him in the back of  
6 the squad.

7                   "A" for NOTACRIME, the onset is acute, which means  
8 it can happen right away.

9                   Now, one of the things the government has pointed  
10 out was that there was no information in dispatch about the  
11 officers coming to an emotionally disturbed person or people  
12 reporting something, but that doesn't mean that it can't  
13 happen, just because it's not reported.

14                  And we have another video, which we won't show you  
15 again.

16                  "C" stands for "Patient is confused." I would  
17 point out that although Mr. Floyd seemed agitated, it did  
18 not appear to me that he was confused because he was able to  
19 respond to questions. It appeared to me he was responding  
20 to Mr. McMillian's questions and not following the police  
21 commands, but I'm not arguing he was confused.

22                  "R: Patient is resistant. Handcuffing and  
23 hobbles will take multiple officers." Isn't that really  
24 what we're watching here? And if you will see in the  
25 comment to this -- and, again, this is how my client was

1       trained -- "MPD blue hog pile." They are talking about ways  
2       to control a person who is suspected to be in excited  
3       delirium.

4                 "I" for NOTACRIME stands for "Patient's speech is  
5       incoherent." I don't know that Mr. Floyd's speech was  
6       incoherent. But they also say, "Do not rely on information  
7       they give you to be accurate." I'm not on drugs. I'm not  
8       that guy. Was that really accurate?

9                 "M" of NOTACRIME stands for mental health. Any  
10      behavior that seems to be out of the ordinary, and then it  
11      can be anything you observe from the scene. In other words,  
12      you don't have to rely on preexisting information. It can  
13      be things you as an officer observe.

14                 And then "E: EMS should be requested early."  
15      What did the officers already have in this case? They had  
16      EMS being already requested and now they're stepping it up.

17                 And then going on to infamous slide number 31. I  
18      can show you at the bottom here. There we go. And this is  
19      the slide that was used in training that shows a person  
20      being put down who is suspected of being in excited  
21      delirium, at least for purposes of this drill, with the knee  
22      on his neck.

23                 Now, this, of course, is the only slide in that  
24      PowerPoint that talks about placing the subject in the  
25      recovery position.

1                   You would also note in the comments that it said,  
2                   "You may need to have one officer ride along with the  
3                   subject if there is a chance they could become violent."  
4                   Why do you suppose they are training officers this? Because  
5                   obviously there have been recorded instances of people who  
6                   would appear to be under control who suddenly become violent  
7                   and fight again.

8                   Now, if you go to that training and you think  
9                   about what all three of those officers said, again, all  
10                  three officers come to the same conclusion, rightly or  
11                  wrongly, but at least it is based on their training and not  
12                  something they're just grabbing out of the blue. And  
13                  Officer Lane was verbalizing this at the scene.

14                  Now, again at this point my client asks that EMS  
15                  be stepped up to Code 3. And he testified that he would  
16                  expect them, if they're responding from Hennepin County  
17                  Medical Center to 38th and Chicago, that it would take  
18                  approximately five to six minutes for them to get there.

19                  So at this point they decide that they're not  
20                  going to use the restraint, again, for two reasons. One is  
21                  that potentially Mr. Floyd is in a drug ingestion or an  
22                  overdose that's going to need to be assessed for that and it  
23                  becomes a medical issue because you don't bring people who  
24                  may well be having a drug reaction issue to jail without  
25                  giving them medical attention first; and the second, the

1                   police officers suspected that Mr. Floyd was in excited  
2                   delirium.

3                   Now, going, then, to analyzing my client's actions  
4                   from a perspective of what he knew, this is what he was  
5                   dealing with.

6                   Now, look at my client's training. Again,  
7                   basically what they train Minneapolis police officers to do  
8                   specifically with people in excited delirium is to get them  
9                   under control and await the arrival of emergency medical  
10                  services. These are the paramedics that you've heard about  
11                  that come out and sedate people.

12                  Secondarily, look at my client, who has  
13                  independent experience and training dealing with people in  
14                  excited delirium. You will remember that when he was laid  
15                  off following the recession in 2009, that he went to work at  
16                  Fairview Riverside Hospital as security. And in that role  
17                  he didn't receive any training about excited delirium, but  
18                  he was repeatedly called on to restrain people who were  
19                  severely agitated or potentially in excited delirium at the  
20                  behest of medical personnel, nurses and doctors. And his  
21                  role was to restrain them, as he testified, people using  
22                  knees, multiple people on them, so they could be sedated for  
23                  their own well-being.

24                  And then look at essentially my client's  
25                  additional experience with excited delirium, because he's

1           been a police officer for a period of time. He testified  
2           that he's dealt with people who he suspected of being in  
3           excited delirium approximately 30 times over the course of  
4           his career. And with regard to that, the training, if you  
5           look at it from the department, is to restrain that person  
6           until EMS shows up.

7                 Now, let's shift focus to the training, because  
8           you heard Inspector Blackwell come in here and testify we do  
9           not train people to put knees on neck in Minneapolis, that's  
10           not something we authorize. We also know that's probably  
11           not accurate at this point.

12               All right. We know that neck restraints are  
13           allowed. And even using your leg to do a neck restraint on  
14           somebody is allowed per policy, even though there's no  
15           training on this.

16               Now, if we look at Inspector Blackwell, she  
17           testified that when she became head of the training  
18           division -- she was promoted to lieutenant -- she became  
19           head of the training division, she reviewed all the training  
20           herself. She reviewed it and previewed it with command  
21           staff, including the chief of police, to make sure his  
22           vision was in there. And her testimony was they didn't use  
23           knees on neck.

24               Now, I won't go back and relive all this, but if  
25           you look at some of the training, we know that there were

1           knees on neck being trained in Officer Thao's academy.

2           If we could put up just a couple pictures. And  
3           this is from his time at the academy in 2009. If you  
4           recall, he was actually given sort of as a memento a number  
5           of different photographs. And so we've got some photographs  
6           from 2009 that clearly show things. And these are exhibits  
7           which have been admitted in evidence. You can review those.

8           This is Exhibit T-27. This is one of the  
9           supervisor's desk at the police academy, Special Operations  
10          Center. And you can see in the background there's a  
11          bulletin board and you can see at the top there are the  
12          officers that were a part of the academy.

13          And if we could show a couple videos that clearly  
14          show officers using their knees on someone's neck. Do you  
15          see the knee right there (indicating)?

16          Okay. We can move to the next one. And if you  
17          look at the officer's knee.

18          If you could move to the next one, this is  
19          actually a 2009 version of Officer Thao, along with another  
20          recruit, and they are using their knees on people's necks.

21          And then we also showed you videos that were taken  
22          in the 2017 police academy. This is when the officers are  
23          doing drills on how to put handcuffs on somebody down. And,  
24          again, Officer Black -- excuse me, Inspector Blackwell's  
25          testimony was we don't train the use of knees. Do you see

1                   the officer's knee on the person's neck?

2                   And if you recall the testimony about the special  
3                   equipment they're wearing, that helmet actually has a plate  
4                   on the back of the neck as opposed to the front, which lends  
5                   credence to the idea that they might be expecting that  
6                   people use their knees on neck.

7                   There's another one.

8                   And there's another one.

9                   And there's one where two officers are doing this.

10                  And then if you go to that infamous slide 31,

11                  which if we could take down that, it again shows an  
12                  instructor using their knee on someone's neck. We now know  
13                  that Officer Blackwell's testimony wasn't accurate.

14                  Now, if you look at my client's specific excited  
15                  delirium training, he testified he received training on  
16                  excited delirium at the police academy that was a  
17                  PowerPoint. And then following his layoff, he came back to  
18                  the police academy and over the course of years in-service  
19                  was shown that exhibit, T-12. He testified he had seen that  
20                  exhibit.

21                  All right. He also had had lots of exposure to  
22                  people in this circumstance, in excited delirium, and he  
23                  talked about the need, what they're trained on, to restrain  
24                  the people so they don't exhaust themself to death,  
25                  essentially for their own safety. That's why they come in

1 and sedate them.

2 I would point out a couple things. One is the  
3 government equates restraint to use of force, and that's not  
4 always correct. A person can be restrained without a use of  
5 force. An officer can come over and place his hand on my  
6 arm. That's not really a use of force. He's just  
7 restraining me. I can also be restrained when I'm put in a  
8 room with special padding, like at Fairview Riverside, or I  
9 can be restrained down on the ground. The idea is why is a  
10 person being restrained.

11 Now, look at my client's experience. He testified  
12 about two specific examples of the approximate 30 times he  
13 dealt with excited delirium.

14 One was when they responded to a car in a snow  
15 bank, and by the time he'd gotten there both fire and EMS  
16 was there and the person was loaded into the back of the  
17 paramedics thing, and they were sitting around talking when  
18 all of a sudden the person woke up and started fighting.

19 The second one my client testified about getting a  
20 call to "one down" on approximately 46th and Hiawatha and  
21 coming there and EMS had already loaded the person up when  
22 they're sitting there talking. And then the person got in  
23 the van. They asked them, "Do you want somebody to go  
24 with?" "No, I don't." And then a couple minutes later  
25 there's a call fighting with paramedics.

1                   So in my client's own experience, he's dealt with  
2 people who have risen up when they're in excited delirium  
3 and gotten violent again, in addition to his particular  
4 training.

5                   Now, with regard to the training he received, they  
6 talked about the role of police in sedation in that  
7 PowerPoint. Again, you'll get that to go back with you.  
8 The role of the police officer is clearly to restrain a  
9 person so that they can be sedated for their own safety.

10                  Now, the government's talked about scene safety  
11 and they made a great deal of this crowd up there, that that  
12 crowd wasn't posing any danger to the officers. But when  
13 you look at my client's actions or inactions, look at the  
14 idea of scene safety as being much more than just simply the  
15 crowd of people who were standing there doing whatever  
16 they're doing.

17                  And, by the way, these people don't know what's  
18 going on. They don't know what's going on with Mr. Floyd  
19 before, when he was in the car or brought over to the Dragon  
20 Wok or brought here, the struggle. All they see is the  
21 police officers on him.

22                  And they're calling out and asking for certain  
23 things, but when they're doing that, my client's testimony  
24 is they were restraining Mr. Floyd to wait for EMS. They're  
25 essentially waiting for medical services to arrive to sedate

1 him for his own well-being.

2                   Additionally, you've seen from some of those  
3 videos in the excited delirium training these people can be  
4 violent, maybe -- it's a medical issue, I'm not saying  
5 they're doing anything criminal or wrong, but you can see  
6 them punching people, punching fences, breaking free,  
7 attacking police officers, doing all kinds of stuff. This  
8 is what they train these officers to believe is going on  
9 with excited delirium.

10                  So there's a component of safety of the officers  
11 and then a component of protecting the person from themselves  
12 or attacking bystanders. So think about that when you look  
13 at my client's actions.

14                  Now, if you look at this case, one of the things  
15 the government has pointed out is they don't have to prove  
16 that Mr. Thao intended to have Mr. Floyd die. Absolutely  
17 correct. I'm not saying any of that is wrong. But you have  
18 to look at my client's intentions within the context of  
19 willfulness.

20                  And if my client reasonably believes that  
21 Mr. Floyd may be in excited delirium and reasonably believes  
22 that he needs to be held until EMS arrives, his purpose is  
23 not a bad purpose and it's not done with improper motive.  
24 It is done to make sure that he receives the medical  
25 attention he needs. This is what goes to the idea of

1       willfulness, ladies and gentlemen of the jury. This is an  
2       element the government has to prove beyond all reasonable  
3       doubt.

4                  I would also point out one final thing is that  
5       with regard to the deliberate indifference to the serious  
6       medical needs and the failure to intervene, one of the  
7       things that my client was trained is that if you don't have  
8       a pulse, you are supposed to perform immediate CPR.

9                  And so the idea is that if Mr. Thao was standing  
10      there and the other three officers are monitoring or dealing  
11      with Mr. Floyd and he doesn't see them rolling Mr. Floyd  
12      over and doing CPR, a logical assumption from that, from his  
13      training, is that Mr. Floyd still has a pulse.

14                 If that is the case, he's not being deliberately  
15      indifferent to the medical needs of Mr. Floyd and,  
16      additionally, that force is not unreasonable because  
17      Mr. Floyd still has a pulse.

18                 The specific intention behind my client's actions,  
19      rightly or wrongly, was to try to make sure that Mr. Floyd  
20      was actually being held until he could receive medical  
21      attention. And for you to find my client guilty, you have  
22      to find that his actions in doing so were done with a bad  
23      purpose or improper motive.

24                 In this case when I spoke to you at the outset, I  
25      said at the end of this case, once you've heard all the

1 evidence, there will only be one reasonable verdict and that  
2 verdict is not guilty on all counts. Remember, just because  
3 something has a tragic ending does not mean it's a crime.

4 Thank you very much.

5 THE COURT: Thank you, Mr. Paule.

6 Members of the jury, let's take a brief recess at  
7 this time. We'll stand in recess for just about ten  
8 minutes. And, again, keep an open mind and don't discuss  
9 the case.

10 The jury may be excused.

11 (Recess taken at 1:37 p.m.)

12 \* \* \* \* \*

13 (1:48 p.m.)

14 **IN OPEN COURT**

15 **(JURY PRESENT)**

16 THE COURT: Mr. Plunkett, I'll recognize you for  
17 summation.

18 MR. PLUNKETT: May it please the court.

19 Ms. Bell, your team, Mr. Paule, Ms. Paule, Mr. Tou  
20 Thao, Mr. Gray, Mr. Lane, family, supporters, friends,  
21 members of the jury.

22 There are four factors that led to the  
23 conclusion -- lead to the conclusion that Mr. Alex Kueng, a  
24 26-year-old idealist from North Minneapolis, did not act  
25 willfully as alleged in the crimes he is charged with.

1 Those factors are: One, his inadequate training; two, his  
2 lack of experience; three, his perceived subordinate role to  
3 Mr. Chauvin and the other officer; and his confidence in his  
4 senior officers, one of which, Mr. Chauvin, was his field  
5 training officer until just two and a half shifts prior to  
6 this event. Those four factors, combined with a  
7 confrontational crowd, created a dynamic, unusual, and,  
8 frankly, foreign situation.

9                 When we first met during my opening statement, I  
10 told you that this case is about a tragic event in our  
11 nation's history that we have all now viewed from every  
12 available angle and perspective. As I said, things cannot  
13 be unseen.

14                 But those many videos that we have now been  
15 exposed to are not what Alex Kueng saw, perceived, or  
16 experienced on May 25th, 2020. In fact, his own body  
17 camera, body-worn camera, does not fully explain or  
18 demonstrate what he perceived and experienced as it was  
19 happening.

20                 There's one legal principle that I anticipate the  
21 court will instruct you on, well, there's many, but one I  
22 want to focus on, and that is the need to avoid relying on  
23 20/20 hindsight while you apply the law to the facts in your  
24 examination of Mr. Kueng's conduct.

25                 Now, of course you must take the law as it comes

1 to you from the court, but what does it mean to avoid using  
2 20/20 hindsight? It means, as a fact-finder, you should  
3 avoid considering matters that are outside the realm of  
4 Mr. Kueng on what he could see, perceive, or experience when  
5 considering or determining if his actions reflect a willful  
6 disregard for Mr. Floyd's constitutional rights.

7 Again, I'm Tom Plunkett and this is my closing for  
8 Mr. Alex Kueng. A closing is a wrap-up. It's Mr. Kueng's  
9 last opportunity to have me address you on his behalf.

10 In the next hour or so, and I will try to move  
11 with a little alacrity here as we've been here a month --  
12 I'm going to talk about who Alex Kueng is, why he became a  
13 police officer, his training, the evidence, testimony that  
14 we have heard over the last month.

15 But first I want to talk about the elements of  
16 these two offenses. I put the elements first because a jury  
17 must apply the law as the judge gives it to you to the  
18 facts. So to simply put -- put it simply, if we don't talk  
19 about the law first, you have nothing to apply the facts to.

20 Elements. I anticipate this court will instruct  
21 you on the elements of the offense. Now, perfectly clear,  
22 I've said it already, any time throughout my presentation  
23 when I talk about law, always know now and throughout my  
24 closing presentation that only the judge can give you the  
25 law.

1                   Alex Kueng is charged with two counts in this  
2 criminal indictment. Both of the counts charge him with  
3 deprivation of civil rights. Although each count is an  
4 alleged violation of the same law or statute, they are, in  
5 fact, different offenses with slightly different elements,  
6 although there's a fair amount of overlap. Elements are  
7 what the government needs to prove to you by proof beyond a  
8 reasonable doubt.

9                   In Count 1 it is alleged that Alex Kueng deprived  
10 Mr. Floyd of his right to be free from unreasonable seizure  
11 during an arrest on May 25th, 2020.

12                   In Count 2 it is alleged that Alex Kueng deprived  
13 Mr. Floyd of liberty without due process of law by acting  
14 with deliberate indifference to George Floyd's serious  
15 medical needs.

16                   There are four elements, I believe, to each  
17 offense. For now I'm going to focus on the second of those  
18 four elements, and that's the willful element.

19                   To act willfully means that it must be proven that  
20 Alex Kueng acted with a bad purpose or improper motive to  
21 disobey or disregard the law, specifically intending to  
22 deprive Mr. Floyd of his rights.

23                   The government does need to show Alex Kueng had a  
24 specific intent. Specific intent must be proven.

25                   Essentially, that as he knelt there that day, he intended to

1       willfully deprive Mr. Floyd of his rights. If it is not  
2       shown that there's a willful act with specific intent to  
3       deprive Mr. Floyd, and not just shown, but shown by proof  
4       beyond a reasonable doubt, then the crime is not proven.

5                  In Count 2 the government must prove that Alex  
6       Kueng acted with deliberate indifference. That means the  
7       government must prove that George Floyd suffered -- and this  
8       is Count 3 -- from one or more objectively serious need and  
9       that Mr. Alex Kueng knew of that serious medical need, but  
10      deliberately disregarded George Floyd's medical needs.

11                  Evidence. Most of the evidence came to us from  
12      the mouths of witnesses and via videos.

13                  I anticipate that the court will instruct you on  
14      the credibility of witnesses. Please listen to that  
15      instruction. I'm not going to read it to you. I want to  
16      move -- be efficient, but not waste your time. You are  
17      going to get a copy of the instructions. Please take a  
18      close look at that one.

19                  Now let's talk about some of the witnesses.

20                  Dispatcher Jenna Scurry and Captain Norton of the  
21      Minneapolis Fire Department. It wasn't entirely clear to me  
22      why they talked so much about this fire truck versus  
23      ambulance thing.

24                  Keep in mind -- it's a small point, but the  
25      government brought it up, so I thought I should cover it.

1       When Captain Norton with many, many years of experience  
2       testified, Captain Norton said EMS is not solely the fire  
3       department. Captain Norton testified -- please recall that  
4       I confirmed. If you say I need EMS, are you asking for  
5       medical services? He says, yes, sir, that's paramedics and  
6       fire. I believe Mr. Thao testified to that too. When you  
7       say EMS, you expect the entire calvary. That's what these  
8       gentlemen did. I don't know that it's an important part of  
9       the case, but the government brought it up, so I felt I  
10      needed to address that.

11                   Paramedic Derek Smith. A calm fellow, to be sure;  
12                   a highly trained and experienced paramedic and a man of few  
13                   words. He felt the scene was not safe to provide medical  
14                   care, so he moved Mr. Floyd to a different location. To  
15                   him, the scene was not safe for medical care. He chose to  
16                   go a couple of blocks away. He felt the crowd was hostile.

17                   There was questions to him about his May 29th  
18                   interview with the FBI where he said I'm going to go home at  
19                   the end of the night. The way they teach it is scene safe,  
20                   and that scene was not safe.

21                   Inspector Blackwell. Please take time to reflect  
22                   on and scrutinize the difference between Inspector  
23                   Blackwell's direct examination by the government and her  
24                   cross-examinations.

25                   I'm going to run through just a few quick things

1           that she talked about and then I'm going to talk about some  
2           other things.

3           You've already seen these, so I want to go through  
4           these pretty quickly. I think this is T-20. She told you  
5           straight up that this is never trained, but we know that in  
6           Tou Thao's class and in 2017 that the knee on the neck was a  
7           common practice. We know that because we've seen it on two  
8           different occasions.

9           She also told you that at this big fight training  
10          scenario -- we never saw the fight training scenario, we  
11          never heard any testimony about it from anyone except her,  
12          but what we did see is scenarios end when the persons are  
13          handcuffed. We did see that.

14           The side recovery position was never part of the  
15          scenarios. Do you remember I asked her about the lesson  
16          plans? Because the government had gone through the lesson  
17          plans in some detail. And she conceded that it appears  
18          nowhere in the lesson plan.

19           This is the duty to intervene training. This is  
20          one slide in a slide deck. What is the duty to intervene?  
21          We found out now that when you come to this slide, somebody  
22          reads to you, to the recruit, the policy; gives a couple of  
23          rather obvious examples about situations where you should  
24          intervene, kicking somebody in the head that's handcuffed;  
25          and then they play this video. But this video doesn't exist

1 anymore, so we don't really know what it is.

2 We know in the training that she said, oh,  
3 heavens, no, we don't train a "us" verus "them" mentality.

4 That's not what we do. But when we got to the last slide in  
5 the use of force defensive tactics presentation, we saw the  
6 video with very disturbing images. Even their expert,  
7 Mr. -- Chief Longo, said that that video was disturbing. I  
8 don't see any reason to play it for you again. We don't  
9 have five minutes to sit and watch that again. I think  
10 we've seen it twice.

11 We have this slide from the excited delirium  
12 training. I think we heard testimony that what this slide  
13 shows -- I think Mr. Paule brought up the comments -- is  
14 that someone with excited delirium needs to be held down.

15 We learned that the inspector was promoted out of  
16 training just two and a half months before the DOJ  
17 started -- the Attorney General for the United States,  
18 Department of Justice started their patterns and practices  
19 investigation and we found out that that investigation is  
20 going to focus, among other things, on training.

21 We know that Inspector Blackwell met several times  
22 with a team of lawyers, and I think one of the agents said  
23 there was 100 agents on this case. She met with them many  
24 times.

25 She talked to me once on the phone. I told her I

1 can't talk to you, but I've got a private investigator named  
2 Susan Johnson. When Susan Johnson called her three times  
3 and left a message, she didn't talk to us. She said I  
4 receive a lot of phone calls that I don't know the validity  
5 of who they are. Well, the validity of who they are is I  
6 said I've got an investigator named Susan Johnson and she'll  
7 be in touch with you. Think about that in terms of what it  
8 shows for bias.

9                 She had a past relationship with Mr. Chauvin of  
10 about 20 years. I think they were CSOs at the same time in  
11 different precincts. She personally chose Mr. Chauvin to be  
12 an FTO. She confirmed that. She said that when they choose  
13 FTOs, they don't look at any psychological evaluations, they  
14 don't do that, yet they have these people training young  
15 officers. That only came out on cross. The government  
16 didn't bring that up.

17                 She said that the recruit academy had gone  
18 completely away from a paramilitary structure. I'm not  
19 going to run through that training manual again from the  
20 recruit program. You've seen it already. Just rely on your  
21 memory. But several hours of drill and ceremony, parade  
22 rest, stand at ease, column left. And she testified that,  
23 well, those have a lot to do with riot training. Brace the  
24 wall, all these things.

25                 Inspector Blackwell testified that the officer of

1 the day position is a leadership opportunity in the academy  
2 to get officers, young officer -- recruit officers  
3 accustomed to dealing with, you know, real-life police  
4 officers. That didn't really pan out.

14                   And in response to that, she created a 40-hour  
15                   class, a 40-hour class with no metric of learning, no test.  
16                   Well, there's one test. They got a lawyer that teaches  
17                   about some constitutional principles. Of course, the lawyer  
18                   shows up at the test. That class is some sort of magic  
19                   inoculation against all the problems in that program?

20 It's her program. She was the training -- head of  
21 training. Now there's an investigation from the DOJ. She  
22 has some bias. She's close friends with -- or was a close  
23 associate of Mr. Chauvin.

24 The point is this. I've asked you, the jury, to  
25 consider four factors. I'm sure you remember what they are.

1           And we're going to talk about some more of those things.

2           Officer Mackenzie. Good officer, shows  
3 initiative, dedicated. She endeavored to help the  
4 department save money, yet still provide good training. She  
5 created the EMR program for the City of Minneapolis. That's  
6 her baby. That's her contribution. That's her mark on the  
7 world.

8           Let's talk about some of the things that the  
9 government never seems to mention to you from the EMR  
10 training.

11           Here we have page 80. Your first consideration at  
12 any emergency scene is safety. Your safety is paramount, as  
13 is the safety of others on the scene. Some scene safety  
14 hazards include violent or hostile situations.

15           Page 82, scene safety. If the scene -- if the  
16 incident is hostile, fight or flee, use cover or  
17 concealment.

18           Page 83. This is talking about triage of medical  
19 patients. To implement START, first ensure that you are  
20 safe and that you have communicated that type of incident  
21 with which you are involved to your communications center.

22           Page 214. Assessment of cardiac arrest. Ensure  
23 the scene is safe.

24           They were tested on this. Exhibit 85, page 2,  
25 make sure the scene is safe. As a critical criteria -- you

1 lose points. Critical grading criteria. Failure to  
2 determine the scene is safe. The same in this patient  
3 assessment section.

4 Page 9 of that exhibit. Check the scene is safe,  
5 then approach the patient. You approach the scene and  
6 ensure that it is safe. Demonstrate what you do next.

7 Same thing on -- similar on page 10. It talks  
8 about check the carotid pulse.

9 Page 11. Ensure the scene is safe.

10 Here's the test. This is Mr. Kueng's test. The  
11 best method for checking circulation in a triage situation  
12 is to check the carotid pulse.

13 Page 17. If you are unable to feel a carotid  
14 pulse in an unconscious person within five to ten seconds,  
15 you should begin cardiopulmonary resuscitation at once, CPR.

16 18. Determine that the scene is safe and assess  
17 the patient.

18 Check the carotid pulse, we heard that repeatedly.  
19 On cross-examination Officer Mackenzie talked about --  
20 talked about this. She agreed that checking the carotid  
21 pulse was the gold standard. And where an EMR should go  
22 during the ABCs, airways, breathing, and circulation, the  
23 "C" is the carotid pulse.

24 Officer Mackenzie agreed in her testimony that  
25 Officer Chauvin was in the best position to assess Mr. Floyd

1       due to his proximity to Floyd's head and his carotid artery.  
2       She agreed that when Mr. Kueng did not get a radial pulse or  
3       a wrist pulse, that he reported that to Officer Chauvin, who  
4       was in control of the head.

5              She also confirmed that if a person cannot find a  
6       radial pulse, they should actually check a carotid pulse.

7              In fact, if you don't find a carotid pulse, she said you  
8       should have another person check before beginning CPR if it  
9       can be done quickly.

10             Officer Mackenzie confirmed or testified that the  
11       radial pulse is not reliable when a person is in handcuffs.

12             She also testified that there isn't a discernible  
13       difference between EMS and fire and rescue.

14             Lieutenant Zimmerman. You can't help but like the  
15       lieutenant. He's a venerable grandfather figure, but we did  
16       peel back that onion just a little bit. Let's talk about  
17       that.

18             He's not a bad man, he's a good person, but he,  
19       like most, viewed the video, the Frazier video. That's the  
20       viral video. It's powerful. The video shows Mr. Chauvin.  
21       But his testimony was not consistent with what a good  
22       homicide investigator does, because after viewing that video  
23       he began confabulating the facts, changing them to fit a  
24       narrative that he wanted.

25             He testified that the boys lied to me. They told

1                   the FBI -- yeah, the first thing they said was, you know,  
2                   can we turn off our body-worn cameras? That imputes a  
3                   suggestion that the officers wanted to hide something. I  
4                   played the video for you. They never said it. They told  
5                   him that they suspected an overdose. That's a very  
6                   significant change from what was actually said, because if  
7                   you honestly suspect an overdose, then you've got actual  
8                   knowledge of a serious medical need. Never said, it was  
9                   never said to him, but he told that to the FBI. There's a  
10                  third thing that escapes me right now, so I apologize.

11                  Keep in mind the context of that statement.  
12                  They're calling it a statement, but there was not a question  
13                  and answer. It's nothing like that.

14                  Ah, the third thing. It came back to me like a  
15                  flash. He told the FBI that they lied because they never  
16                  told him 330 was involve. 330 is the squad car for Mr. Thao  
17                  and Mr. Chauvin. They actually did say that. Granted, he  
18                  was looking at his phone. When you look at the video, he  
19                  looks up, though, while they're talking about that. I don't  
20                  know why he'd tell that to the FBI except he saw this  
21                  powerful video and it changed how he saw it and perceived  
22                  the events that night.

23                  The context of that interview too, if you  
24                  remember, was a critical incident interview. They thought  
25                  that this was the safety statement, where you're just

1 supposed to give a little bit of information to the --  
2 actually it's supposed to be the scene commander, but the  
3 guys were young, they were inexperienced. They just knew it  
4 was a lieutenant, so they cooperated. I think Mr. Lane was  
5 trying to clarify this. What do you want? Front to back?  
6 He says yeah.

7 Sergeant Pleoger, this is a use of force review  
8 that I think Mr. Kueng said he'd never actually experienced  
9 before. But to come up here and look at you people in the  
10 eye and say that those two interviews show that -- I'm more  
11 worried about Mr. Kueng, but that these two officers were  
12 lying, that doesn't pan out. That doesn't make sense. That  
13 doesn't -- it conflicts with common sense. This wasn't a  
14 question and answer interview. This wasn't a planned thing.  
15 This was tell me what happened. The same with Sergeant  
16 Pleoger.

17 Experts. We heard from two use of force experts,  
18 Mr. Longo, Chief Longo, very good witness. But one can't  
19 miss the fact that Mr. Longo said he was contacted by  
20 Ms. Trepel, who is seated right over here from the DOJ.

21 It didn't come out in his report, it didn't come  
22 out when the government was questioning him, but on  
23 cross-examination we found out that he had volitionally  
24 involved himself in the investigation from very near the  
25 beginning. On cross-examination we found out that he called

1 up the county attorney's office because he wanted to be  
2 involved in this case. We found out that he gave -- because  
3 there was going to be an interview of at least one officer,  
4 he fed questions to the investigators through the county  
5 attorney's office and to the BCA.

6 I don't know that you can say that you are  
7 objectively evaluating a case if you are involved in the  
8 actual investigation from day one and you seek it out. It  
9 certainly is much different than Ms. Trepel calling him up  
10 and saying to you are you interested.

11 Cozy relationship with the DOJ through his  
12 monitoring programs. The materials that he read were  
13 cherry-picked. He only got what the government wanted him  
14 to have. Think of bias. Think of things that would have to  
15 make you question the veracity of his testimony.

16 He testified that he'd been through the training  
17 scenarios and everything and that he thought the duty of --  
18 the intervention training was really quite good here in  
19 Minneapolis. I confronted him on that. You mean reading a  
20 slide and reading a policy and giving a couple of examples  
21 is good training? Well, no. He's cross-dressing at that  
22 point. He said, well, I looked at the -- you know, all the  
23 training. Well, we found out before he even testified from  
24 Inspector Blackwell that the word "intervention" doesn't  
25 even appear in the lesson plans.

1                   Mr. Ijames, Steve Ijames. Forty years as a law  
2 man; done use of force training all over America, all over  
3 the world; doesn't have a dog in this fight. He's not paid  
4 for his time. He testified and he explained that when you  
5 look at this situation, that -- well, first, the training  
6 was lousy, inadequate. And he was given full access to the  
7 entire file. He could look at anything he wanted. He  
8 didn't look at the Super Bowl Taser plans, things like that,  
9 but he wasn't restricted. Think about his testimony. I'm  
10 not going to review this stuff in all that great of detail  
11 because you sat here and you heard it too.

12                   Special Agent Vogel. The judge is going to tell  
13 you about not using 20/20 hindsight. Well, I think the  
14 special agent spent over 100 hours looking at these videos  
15 and trying to piece together his rather attractive  
16 three-colored timeline. The timeline, however, is just data  
17 marks in time. It's not accurate because it doesn't show  
18 what happened, it didn't show what people saw, perceived, or  
19 knew.

20                   Doctors. We heard from doctors from all over the  
21 country, truly outstanding doctors that had many hours to  
22 review all the video, look at this from many different  
23 angles. I think I reviewed all of the different things two  
24 of those doctors reviewed and it was a rather lengthy list.

25                   And they came up with conclusions about very

1           intricate medical things. One of the doctors even testified  
2           that he used the expression on Mr. Floyd's face to determine  
3           when he had passed out. Again, these are things that they  
4           were able to see, perceive, and know that were not available  
5           to the officers.

6           Actually, we had two doctors from right here in  
7           Minnesota, Dr. Baker and Dr. Langenfeld. I don't know that  
8           we needed any more information, but we had to have two  
9           more -- at least two more physicians come in and talk about  
10          it. They spent a lot of time and they were paid a handsome  
11          fee.

12          There was many bystanders, Genevieve Hansen,  
13          Darnella Frazier, Alyssa Funari, several bystanders. What  
14          they have in common is that they saw things from a  
15          perspective that was unavailable to Officer Kueng.

16          Alex Kueng, that's really the only thing I should  
17          have to talk about. Alex Kueng took the stand behind me.  
18          He testified. He listened to every question that the  
19          government wanted to put to him and answered it. You decide  
20          if he was truthful. He reflected on his answers, listened  
21          to the questions, and answered them.

22          He explained what he was able to perceive and  
23          understand. He talked about not knowing if the scene was  
24          safe. Why not? Because Mr. Chauvin unsnapped his Mace and  
25          shook it at the crowd. That was a moment of significance to

1 him. He could hear bits and pieces. He could hear some  
2 things. I don't know what all he heard. He talked about  
3 how this was the biggest struggle he'd ever been in. He  
4 talked about how his focus shifted, had some tunnel vision,  
5 some auditory exclusions because of the intensity of the  
6 situation. That's what he could see. That's what he could  
7 perceive. That's what he could experience.

8 And who is Alex Kueng? He's a young man. He was  
9 only 26 at the time, 28 now, certainly the youngest person  
10 involved here. North Minneapolis kid. Comes from a blended  
11 family. Had reasons not to like the police because they --  
12 I don't think he used the word "harassed," but they were  
13 impolite to his sisters or his family members when they came  
14 to the home.

15 But he comes from a family of missionaries that go  
16 abroad and help people, his grandfather, his mother, and  
17 himself. And he wants to make this world a better place, a  
18 better place not for him, but for everybody. That's why he  
19 decided that he was going to become a police officer.

20 Got a job doing security I think at Macy's. No  
21 training there. Got into the program, was a CSO and worked  
22 very hard. Yeah, he had training, no question about it.  
23 I'm not trying to say he wasn't trained. I'm trying to say  
24 that the training was inadequate to help him see, perceive,  
25 and understand what was happening here.

1                   He was in the FTO program. He was under the  
2 influence of an FTO that he'd had for two more sessions than  
3 policy wants, than policy says you should do. He respected  
4 this person. He looked up to this person. He relied on  
5 this person's experience.

6                   This is something that I really want to talk  
7 about, because the government talked about this in their  
8 closing. It was objected to, the way they presented it in  
9 their testimony. And I don't say this lightly, but this is  
10 just plain sneaky.

11                  They took this body-worn camera, Ms. Sertich right  
12 from her mouth said that this is how things happened during  
13 the examination. Tom Lane, TL: "Roll him on his side?"  
14 George Floyd: "Ah." JK, that's Alex Kueng, J. Alexander  
15 Kueng JK: "No." Derek Chauvin: "No." JK, Alex Kueng:  
16 "Just leave him." Derek Chauvin: "Staying put the way you  
17 got him." George Floyd: "Ah!" They actually presented  
18 that to you as evidence in a serious case.

19                  Let's take a look at that video.

20                  (Video recording played)

21                  This case is not just data marks in time. This is  
22 a flowing event, and it didn't flow the way that transcript  
23 tries to make you believe or that the government tries to  
24 make you believe. It flows the way it happened on this  
25 tape. That's what you have to rely on. That's the real

1 evidence.

2 I'll show the other video that they talked about  
3 of Mr. Kueng, Alex Kueng right here. This is the one where  
4 we cross-examined and he said, well, I was just passing  
5 information down the line. But in the interest of  
6 completeness, they tried to portray this one to you  
7 differently than it really is. We'll take a quick look at  
8 it

9 (Video recording played)

10 What happened at this scene, Alex Kueng was  
11 confronted with something that was probably beyond his depth  
12 at that point. This guy -- you know, Alex Kueng, he only  
13 looks small when he stands next to Tom Lane. He's a  
14 broad-shouldered fellow. He's a high-level competitive  
15 soccer player. He and Mr. Lane couldn't get Mr. Floyd in  
16 the car, try as they did with their training. They were  
17 working on it.

18 Mr. Chauvin shows up with Mr. Tou Thao. And just  
19 like in FTO, they took over, indicating that you're not  
20 doing it right. The question is what did he see, perceive,  
21 and experience.

22 I'm going to talk about the JIGS a little bit.  
23 JIGS means jury instruction guide. Some people put these up  
24 on the big screen. I don't think that's necessary. Let's  
25 just kind of move through these. It's my understanding the

1                   court will give you your own copy to look at, but this is  
2                   the law.

3                   You will be instructed on the presumption of  
4                   innocence, page 13. "The presumption of innocence alone is  
5                   sufficient to find each defendant not guilty of each count."

6                   Willful, it's an element. The defendants acted  
7                   willfully, that is, with a bad purpose or improper motive to  
8                   disobey or disregard the law, specifically intending to  
9                   deprive the person of their rights.

10                  Page 19, it talks about objectively unreasonable  
11                  in light of the facts and circumstances as judged from the  
12                  perspective of a reasonable officer on the scene without the  
13                  benefit of 20/20 hindsight, without the benefit of looking  
14                  at the Frazier video, without the benefit of having doctors  
15                  that are -- have years of education and decades of  
16                  experience.

17                  Unreasonable use of force to occur in their  
18                  presence if that officer has the opportunity to stop the  
19                  force. Read on from there. This means that if an officer  
20                  knows that the fellow officer is using unreasonable force,  
21                  they have to realize it.

22                  That the defendant actually knew Mr. Floyd had a  
23                  serious medical need. However, you must find that the  
24                  defendant had specific intent to deprive the person of a  
25                  protected constitutional right by federal law.

1                   Specific intent instruction. To establish  
2 specific intent, the government must prove that the  
3 defendant knowingly did an act which the law forbids  
4 purposely, purposely intending to violate the law.

5                   You're going to have the JIGs. You don't need me  
6 to read you the JIGs. I've been watching you. You are  
7 hardworking. I've seen note-taking, watching, listening.  
8 Apply the law, the law to the facts and think about it.

9                   You are a jury. We often hear about the mob  
10 mentality. Courts are this country's protection against the  
11 mob, and courts depend vitally on you, as jurors, to examine  
12 the facts and discharge your duty to be fair and impartial.  
13 The exact opposite of a mob.

14                   There is a quote from a book about a case that  
15 captures this and the quote is this: When a man is thrown  
16 to the mob, is that justice? Let me tell you what justice  
17 is. Justice is the law. And the law is a man's feeble  
18 attempt to lay down the principles of fairness for all,  
19 fairness for all. And fairness isn't a deal. It's not a  
20 contract or a hustle or an angle. Fairness. Fairness is  
21 what your grandmother taught you. Fairness is about being  
22 honest. That is what this case is about, that is what the  
23 law is about, fair to all.

24                   Judge Magnuson will instruct you about the law.  
25 For you, as jurors, fairness is to follow the law and apply

1 it to these facts and have the bravery to do just that.

2 That's the only way we don't descend into the mob. This is  
3 the only way we carry out the important business that bring  
4 us all together to serve our constitutional principles that  
5 so many gave so much to preserve.

6 Thank you.

7 THE COURT: Thank you, Mr. Plunkett.

8 Members of the jury, let's take another ten-minute  
9 recess at this time. We will stand in recess for another  
10 break. And please don't discuss the case during the recess  
11 and continue to keep an open mind.

12 The jury may be excused.

13 (Recess taken at 2:31 p.m.)

14 \* \* \* \* \*

15 (2:45 p.m.)

16 **IN OPEN COURT**

17 **(JURY PRESENT)**

18 THE COURT: Mr. Gray, I'll recognize you for  
19 summation.

20 MR. GRAY: Thank you, Your Honor.

21 Your Honor, counsel, counsel, ladies and gentlemen  
22 of the jury.

23 I sat through the same arguments you sat through,  
24 and I've readjusted my arguments because of their arguments.  
25 Some people call it summation, but it's more of an argument.

1                   And, as you know, my client is only charged with  
2 one count -- you've heard that for the last three,  
3 four weeks -- and that's being deliberately indifferent to  
4 George Floyd's medical needs.

5                   And you've heard the other attorneys talk about  
6 specific intent, willfulness, actual knowledge that the  
7 person, Mr. Floyd, has a medical need, a serious medical  
8 need.

9                   Before I get in there, though, and start talking  
10 about that, I'd like to talk about the federal government's  
11 final argument that they presented to you, and there are  
12 some things in that argument that just don't sit well.

13                  First of all, they talk about this crowd that  
14 egged on the -- check Floyd's pulse, do this, do that. You  
15 will hear that crowd when you watch the videos. I'm not  
16 going to play them for you, but you will see it's not the  
17 friendliest crowd.

18                  Maybe not at first when the older gentleman was  
19 talking to them, but when the older gentleman was talking to  
20 them, he told George Floyd to cooperate and get in the  
21 vehicle. We didn't hear that.

22                  And the crowd, the crowd -- of Floyd resisting,  
23 that crowd didn't see that, most of those people. They  
24 didn't see the three and a half minutes of a 6'2", 6'4",  
25 225-pound man of muscle fighting with two police officers.

1 They're not using clubs. They're not Macing him or  
2 anything. They're just trying, trying to put him in the  
3 backseat of a squad. And these bystanders, they didn't see  
4 that part of it.

5 But the government -- you rely on those  
6 bystanders. If they tell you to check the pulse, you check  
7 the pulse. They didn't get all the information as the  
8 police officers did, Lane and Kueng.

9 They didn't see the original arrest when George  
10 Floyd fell down, struggled with the officers to get  
11 handcuffed. They didn't see that. They didn't see George  
12 Floyd in the car.

13 And I'm not bad-mouthing George Floyd, but let's  
14 face it, let's face the facts and the evidence. And the  
15 evidence is that when my client walked up to that Mercedes,  
16 this -- George Floyd was not cooperative at all at first.

17 My client had to take his gun out and yell at him,  
18 "Just let me see your hands," before he did it. And think  
19 about that. And that's policy. You heard that from the  
20 lady, Blackwell. She said that's what you are supposed to  
21 do when somebody doesn't cooperate.

22 And as soon as George Floyd started cooperating,  
23 put his hands on the wheel, my client, Thomas Lane, did what  
24 he was trained to do; he put the gun in his holster. And  
25 you may have heard somewhere in this trial that that's

1 difficult to do once the officer draws it out. But he put  
2 it back and he talked softer to George Floyd.

3 They got him out of the vehicle. Finally, he had  
4 to pull him out. And they struggled with him to handcuff  
5 him, two young men struggling with George Floyd. And why?  
6 Because they were trying to wrestle him. They weren't  
7 bashing him over the head with anything. They're trying to  
8 be cooperative police officers, to cooperate with the  
9 people, the arrestee. They're trying to de-escalate the  
10 situation.

11 They finally got him handcuffed. Then my client  
12 goes over and asks the two passengers: "What's with  
13 Mr. Lane [sic]?" And they say, "Oh, no, he's not on drugs.  
14 He just doesn't like the police." And that's paraphrasing.  
15 You may have in your notes -- but that's basically what they  
16 said.

17 And what do the experts say from the Minneapolis  
18 Police Department, Blackwell and Mackenzie? That's what  
19 you're supposed to do. Mackenzie says by doing that you're  
20 trying to find out if the noncompliance is a result of an  
21 intent, that the man intended to do it, or is he an  
22 alcoholic, is it drugs, what's with the guy, or is he  
23 mentally ill, actually. And that's what Mr. Lane did  
24 pursuant to policy, right in the book. We went through it  
25 two or three weeks ago.

1                   Then he comes over and they handcuff -- no, they  
2 already had Mr. Lane [sic] handcuffed, but he was sitting on  
3 the ground. They got him up and they were going to put him  
4 in the squad car, pursuant to policy. You take the man and  
5 you put him in an enclosed situation where you can do your  
6 investigation, and they did that. Mackenzie said that,  
7 Blackwell said that, yeah, that's policy. Do that and then  
8 do your investigation.

9                   But that didn't work that way, did it? On the way  
10 over my client said, "Well, are you on anything?" Does  
11 George Floyd say, "Yes, I've taken fentanyl and  
12 methamphetamine and, by the way, I have a couple pills in my  
13 car and, oh, also there's some counterfeit bills in the  
14 seat?" He didn't say that. He said, "No. Just hoopin'" or  
15 something with white stuff coming out of his mouth.

16                  And these are two young police officers in an area  
17 that was described to you without any contravention that  
18 this is a Blood area, a high crime area. And I would assume  
19 at 8 o'clock at night it's getting dark out and that's when  
20 the other people, rather than the young people, come out on  
21 the street in that area. My goodness, the clerk you see --  
22 you seen the clerk had a Glock pistol in his back. Most  
23 stores do not have their clerks with guns in their back.

24                  So what do we have? We have George Floyd getting  
25 to the car and all of a sudden, all of a sudden he's

1           claustrophobic for the first time. We haven't heard any  
2           evidence that he'd been claustrophobic before that. We saw  
3           him with his windows up in his Mercedes, because my client  
4           had to pound on the window to get it down. But he's  
5           claustrophobic.

6           And what does my client say? He says, "I'll roll  
7           the windows down." He says, "I'll stay with you." All the  
8           de-escalation taught at the school, the academy, that's what  
9           he was doing. He was trying to de-escalate Mr. Floyd,  
10          talking to a man who was obviously not having all his  
11          faculties. He obviously was either drunk or drugged up. He  
12          wasn't drunk, there was no alcohol in his autopsy, so it was  
13          drugs, methamphetamine and fentanyl.

14          And they can't put him in the squad, but my client  
15          trying to talk him in there, as he's taught, "I'll roll the  
16          windows down." And you look at it, you check it five times.  
17          He said that.

18          And during this time who arrives on the scene?  
19          Derek Chauvin with his younger partner. Chauvin's got  
20          19 years. His partner has, what, eight years? I don't  
21          recall. That's 26 years of police experience. Most of the  
22          police officers retire before 26 years.

23          But think about it. We have these officers on the  
24          scene and my client and Mr. Kueng, because they don't want  
25          to pound on the guy or beat him or zap him or Mace him,

1       they're still trying to wrestle with him. And my client  
2       is -- they're tugging on him on the passenger side of the  
3       door.

4                   Chauvin comes over -- and you saw in the video and  
5       you saw in the photos -- got in front of my client, who is a  
6       large man, but he sees who it is and he backs off. And then  
7       Mr. Chauvin takes charge. It's clear after he grabbed  
8       him -- and you saw the picture -- put him on the ground,  
9       Mr. Chauvin was now the boss.

10                  So he's now on the ground. And my client, Thomas  
11       Lane, what does he do? Pursuant to training, pursuant to  
12       what he was taught, he called the ambulance, like he was  
13       supposed to. Code 2. He's got a cut lip. He's now on the  
14       ground.

15                  And my client, as Dr. Baker said, had nothing to  
16       do with the death of George Floyd, with the asphyxia. My  
17       client never was on him where he would have caused any of  
18       the so-called positional asphyxia. And that was Baker.  
19       That's evidence of innocence.

20                  And, by the way, I told you in my opening  
21       statement that you would hear from the government. Their  
22       evidence will be evidence of innocence, not any guilt. And  
23       right up to now you've heard nothing but innocent conduct by  
24       a rookie police officer. That's all you've heard.

25                  And what does he do? He calls an ambulance. He

1       says to -- should we put his legs up, which would cause him  
2       not to be in a prone position. Deliberate indifference of a  
3       medical service? No. He was concerned. He saw him in the  
4       prone position. So should we put his legs up? No. Should  
5       we hobble him? No. Those were the bosses that were  
6       talking. Tom Lane can't argue with them.

7                  You know that. We don't need commanders, we don't  
8       need the police officers in here to say, well, if somebody  
9       has seniority, you look to them. That's common sense.  
10                 That's common sense.

11                 If you go on a job for four days and you have a  
12       veteran there next door to you and you -- and something  
13       happens of a crisis, you look to him for help, if it's in  
14       that business. That's common sense.

15                 And we sure know that Chauvin, based just on his  
16       conduct here and being a field training officer, was going  
17       to be the leader of the pack with these two kids, with these  
18       two guys. He knew that. He was going to take charge.

19                 And when he saw Mr. Floyd thrashing in the car, he  
20       put him down. He was going to get him. He was going to  
21       show these guys. So he put him down and put his knee on his  
22       neck. These guys didn't know that. My client, he's down at  
23       his feet.

24                 And after -- and you will see there's three and a  
25       half -- if you want to measure it, over three and a half

1           minutes where George Floyd was in the vehicle trying to  
2           fight out, hit his head against the wall or the glass or  
3           something, was thrashing and kicking.

4           Two strong officers, I'm assuming, could not  
5           control him in a way that wouldn't be pounding him on the  
6           head with a club or something of that nature. They were  
7           using what they were taught. My client was -- that you  
8           wrestle with them, you try to get him in there. They didn't  
9           do that.

10           So down on the ground George Floyd is resisting.  
11           He's resisting. He's kicking his legs, you will see it in  
12           the video, and he's resisting. And he resists for I think  
13           it's about four and a half minutes. I have my notes. They  
14           like to say that he laid without resisting for six minutes,  
15           but he was resisting. And if you look at the video -- here  
16           we go. If you look at the video, you will see that.

17           And as soon as he slowed down, Thomas Lane said to  
18           Chauvin, "Shall we roll him on his side?" What he was  
19           taught at the academy, the training. "Shall we roll him on  
20           his side?" And what does Chauvin say? "No." It wasn't  
21           maybe. It was a no and don't talk to me anymore sort of --  
22           he didn't say that, but you've been talked to by people like  
23           this. You've all experienced that in your life. It was a  
24           no.

25           And then he says, "Well, I'm thinking about

1           excited delirium." Where did he -- he didn't make that up.  
2           He must have learned that somewhere. "I'm thinking about  
3           excited delirium." And what does Chauvin say? "Well,  
4           that's why we have the ambulance coming."

5                 Around that time Thao asked -- and let's just back  
6           up one second. Concerned about Floyd's serious medical  
7           needs? When my client asked that, is that deliberate  
8           indifference? Is he deliberately indifferent? Does he know  
9           something and is working against taking care of the man?  
10           No. He's not deliberately indifferent. If anything, he's  
11           very concerned about the arrestee.

12                 He spoke up to a man with 19 years, a man who is a  
13           TFO, training field officer. And the man said, "No." So he  
14           backs off. He does say, "I'm thinking about excited  
15           delirium." And he says, "That's why we have the ambulance."

16                 Around that time -- I'm not going to get exact  
17           times here -- again my client suggested to Thao -- Thao  
18           asked what the ambulance was coming at, and he said a 2.  
19           And my client said, "Better step it up to a 3." Deliberate  
20           indifference? No. The experts, Mackenzie Blackwell, agreed  
21           when he did that, he was showing concern for the arrestee,  
22           to step it up to a 3.

23                 And they're waiting for the ambulance to come.  
24           Two minutes after the first request where my client -- to  
25           have George Floyd rolled on his side, he said it again.

1        "Shall we roll him on his side?" And what does Chauvin say?  
2        He doesn't. He doesn't say anything. He ignores this  
3        person over here. He's just a rookie. He doesn't know what  
4        he's doing.

5                  You know what's going through Mr. Chauvin's mind?  
6        He's got his knee on him. He's got this Donald Williams  
7        yelling at him, telling him he's a bro. He's -- all kinds  
8        of stuff he was calling him. And he was paying attention to  
9        him.

10               My client, down by his legs at this time --  
11       there's no more resistance -- never got a chance to see,  
12       actually see George Floyd's face. He told you and he told  
13       in the statement he gave that he thought Mr. Chauvin had his  
14       knee on his back of his neck or the top of his shoulder.

15               In any event, after the second roll over and it  
16       was ignored, we then get to the crisis time because he isn't  
17       moving. And Lane is looking up -- and you heard his  
18       testimony on this. He's looking up, and it's not disputed,  
19       and he sees the back muscles going up, reassuring him that  
20       Mr. Floyd is still breathing. In fact, he says -- at  
21       8:25:13 he says -- Lane says, "He is breathing." Lane said,  
22       "He is breathing." 26 seconds after that was when Lane said  
23       roll him on his side the second time, with no answer.

24               After that, 29 seconds later, Lane asked Kueng to  
25       check his pulse, and he saw Kueng checking his pulse up on

1           his wrist with handcuffs on. And he checked it twice trying  
2           to find one, and he finally said he couldn't find one.

3           So all of that is being concerned about George  
4           Floyd's medical needs. Not deliberately indifferent. Lane  
5           was concerned. He showed it. He proved it to everybody.

6           And that's when I said in my opening statement all  
7           of this government evidence that we're seeing, it's all  
8           going to establish my client's innocence. And so far we  
9           have nothing to show that he's deliberately indifferent,  
10          that he doesn't -- that he has a bad purpose. And that's  
11          what they have to show.

12          So after the -- Kueng checks 46 seconds later. He  
13          doesn't -- my client sees that it's up by the handcuffs on  
14          the wrist. He saw where it was. So he checked the pulse.  
15          He went down to the ankle. He didn't go up to George  
16          Floyd's head and neck, no, because he's down by the ankle  
17          and he figured he'd check that. He knows Derek Chauvin's up  
18          there and he wouldn't be able to check the carotid pulse.

19          So at 8:26:54, and you've got an exhibit -- one of  
20          Tom Lane's exhibits is this time sheet, so you can go over  
21          these. At 8:26:54 he checks his ankle pulse. Doesn't find  
22          one.

23          Seven seconds later, seven seconds, Lane says,  
24          "Here we go." And the lights and siren, he sees them.  
25          25 seconds later, at 8:27, the EMT arrived. So what do we

1 have? We've got 32 seconds, 32 seconds between the time  
2 when the check -- the pulse was checked and the EMT arrived.

3 And as Lieutenant Zimmerman said, when the EMRs  
4 hit the ground with their feet, they take over. No  
5 uncertain words about that. The police officers, the MPD,  
6 Minneapolis police officers, if requested -- or if they  
7 offer it can assist, but the EMRs or Ts, they're now in  
8 charge.

9 So when they were in charge, it was seven seconds  
10 after Lane checked the pulse. That was after he saw the  
11 lights. 25 seconds later. I apologize. 8:27. 25 seconds.  
12 So it would be 32 seconds the EMT arrived.

13 Ten seconds after they arrive, ten seconds, Lane  
14 tells the paramedics he's not responsive. Exactly, exactly  
15 what he was trained to do, tell the paramedics what's wrong,  
16 he's not responsive. And the paramedic was walking towards  
17 the fellow, Derek Smith.

18 Derek Smith, when I asked him was Mr. Lane helpful  
19 when he went in the ambulance, he said, "Yes." And he  
20 turned to Tom and he said, "Thank you, Mr. Lane." Remember  
21 that? He was that sincere about getting the help. Doesn't  
22 that show that he was not deliberately indifferent? Isn't  
23 that substantial evidence that my client was not  
24 deliberately indifferent about any of George Floyd's medical  
25 needs? Of course it does.

1                   Why did the government indict him? We know why.  
2 Politics, ladies and gentlemen. As Mr. Plunkett said, mob  
3 rule and politics.

4                   MS. BELL: Objection, Your Honor. Move to strike.

5                   THE COURT: It's overruled. It's final argument.

6                   MR. GRAY: Yeah, he was indicted, an innocent man.  
7 So far we haven't seen anything. Well, let's go on.

8                   Lane stands over Floyd in five seconds getting  
9 ready to put him on the stretcher. Four seconds after that  
10 Smith takes the carotid pulse. And this is key. Because  
11 after Smith took the carotid pulse, he didn't do anything  
12 but get up. Didn't make a face, nothing. Walked slowly --  
13 or walked into his ambulance, got the stretcher, and walked  
14 back.

15                  And as my client testified, when he saw that, he  
16 was relieved because he thought, well, he must be all right  
17 because the paramedic, he didn't look in a rush. He didn't  
18 take George Floyd right there, as apparently the government  
19 thinks my client should have. He didn't pick George Floyd  
20 up, put him over on his back, and try to do chest  
21 compressions. No. Why didn't he? He told you. Because of  
22 the unruly crowd. Remember that? The crowd was unruly and  
23 I didn't want to be interrupted, so I didn't do it that way.

24                  He went in -- he walked in the ambulance, no  
25 running at all, walks out with the stretcher and he tells

1                   him to get out of the way, but it's on the second page here.  
2                   He says, "Get out of the way," which -- you know, get out of  
3                   the way, I'm the man.

4                   And Lane helps with the stretcher and 34 seconds  
5                   go by before they load him into the ambulance without -- you  
6                   have a heavy man. You get him on the stretcher. You are  
7                   not rushing. Paramedic is ahead of this. They put him in  
8                   the ambulance.

9                   You know what? And this is the part that any  
10                  reasonable person should just be disgusted, should be  
11                  infuriated to see one of your citizens -- the United States  
12                  of America charges one of your citizens when he offered to  
13                  go in the ambulance, after he saw his face, to go in the  
14                  ambulance and help out. How in the world could our  
15                  government, the wonderful United States of America, freedom  
16                  and all that, charge somebody that does that? Think about  
17                  it. Sort of scary. In other words, you can do an innocent  
18                  act and you can end up in a courtroom like this, because  
19                  that's what happened to Thomas Lane.

20                  He went in the ambulance, as he was supposed to  
21                  do. He told them what happened, told them about the  
22                  resistance when they were waiting for the ambulance. He  
23                  didn't know at that time that the reason George Floyd died  
24                  was positional asphyxia. He had no idea of that. He just  
25                  said, "We held him waiting for the ambulance. I was down by

1 his feet."

2 So he does chest pumps. He's the first one to do  
3 CPR, and that was 78 seconds. Now we got the paramedic  
4 involved in this, so it's not my client's fault. And you  
5 saw, you've seen the video. 78 seconds and that's when  
6 Lane -- the paramedic tells Lane to start the CPR.

7 And watch it if you haven't -- if you want, watch  
8 this man get on his chest after Smith takes his clothes off  
9 and is pressing down, and you will see that he's really  
10 trying to revive the guy. He's taking his airway. He's not  
11 deliberately indifferent about anything. He wants to revive  
12 the man.

13 This man was at one time in his custody. After  
14 Chauvin took over, no longer, but at one time he was in his  
15 custody. And he knew about custody and he knew about care,  
16 and that's what he was doing. Did he do anything up to now  
17 that would show any disrespect for George Floyd? No, not at  
18 all.

19 That was Lane that started the CPR. He does the  
20 CPR, checks his airway. You saw it on the video. The LUCAS  
21 comes out. My client helps out with that.

22 And one more important thing is this. There were  
23 only two paramedics, so one paramedic had to drive that  
24 ambulance because it was a load and go, I guess, because of  
25 the unruly crowd. You can't get around that, government.

1           That's what Smith said, that's why I left. So it must not  
2       have been as peaceful as the government would like you to  
3       believe.

4           Anyway he left, drove down a couple blocks. And  
5       during those two blocks was when my client was assisting, or  
6       three blocks, whatever. And he was needed. Besides  
7       everything else, he was needed to start the CPR, because  
8       Derek Smith couldn't get the LUCAS out, do the CPR, and take  
9       the man's clothes off. He couldn't do all that without  
10      assistance. They had two because they weren't planning on  
11      loading and go. But they did, and that's when my client  
12      helped out.

13           He gets out of that ambulance, gets in a fire  
14      truck and rides back. What happens? At some point in time  
15      he talks to Pleoger or somebody and Zimmerman, and he's  
16      accused of lying, lying, he lied to them. What's really  
17      strange is that Zimmerman walked away before they finished  
18      the story.

19           But what's really the truth here is they didn't  
20      lie. They didn't know at that time that the reason George  
21      Floyd died was because he was on the ground in a prone  
22      restraint with Derek Chauvin on his neck. They didn't know  
23      that. They assumed he was on drugs. And you know what? He  
24      was. He was eating them in the backseat of the squad car.

25           His saliva was on that partial pill, and that

1       wasn't found until the defense wanted another search of the  
2       squad. You heard that. Interesting, huh? Well, as soon as  
3       we charge him, let's drop it, let's not investigate. Well,  
4       it was investigated and he was eating -- he was eating  
5       methamphetamine and fentanyl in the backseat of that squad.  
6       He had two more pills in his car.

7                  In any event, these two officers accused of lying  
8       and they just didn't know what happened to George Floyd.  
9       They didn't know yet.

10                 What's really another ridiculous thing, this  
11      prosecutor stood up here and told you that my client lied.  
12      And I'm looking -- I'm thinking: What? I looked back. She  
13      never, ever, ever accused him of that, never cross-examined  
14      him on what he told Zimmerman or what he told Pleoger. She  
15      just stood up in front of you without challenging my client  
16      with cross-examination, which is a truth teller. That's  
17      what you use cross-examination for, is to find the truth.  
18      She never once asked him why he said that. No. So I didn't  
19      say anything. But then in her final argument he lied. He  
20      didn't lie. Lane didn't lie. Totally unfair conduct.  
21      Unfair. It's as unfair as it could get.

22                 And the character of Tom, that's what they're  
23      trying to do. Well, he lied. He doesn't have a good  
24      character. Oh, doesn't he? The judge will tell you  
25      character evidence you can consider in deciding the guilt or

1                   innocence of somebody. It's very important.

2                   That's why we live a good life, ladies and  
3                   gentlemen. That's why if we get accused of something and  
4                   we're innocent, we can go back to our relatives or friends,  
5                   the people we work with, and we can rely on them to stand in  
6                   court under oath and say that man is a good person, that man  
7                   is peaceful. And that's what we did.

8                   And you take that into consideration with all of  
9                   his other conduct of innocence, and there could only be one  
10                  verdict in this case.

11                  She said also that they all turned their back.  
12                  How in the world can a prosecutor interested in justice --  
13                  that's what they're supposed to have here. This is the  
14                  Justice Department of the United States of America, and she  
15                  accuses all three of these officers of turning their back.  
16                  My client never turned his back. Neither did the other  
17                  guys, when you think about it.

18                  When you think about it -- and we're going to get  
19                  there pretty quick. I'm trying to be short, trying to get  
20                  you out of here at a good time. But when you think about  
21                  it, none of these officers turned their back.

22                  When you think about it, George Floyd was on his  
23                  own here. Killing somebody -- did he have a bad night? Who  
24                  knows? Who knows? But this is not the kind of case where  
25                  three, four men go out and shoot somebody, rob somebody,

1       where it's obvious that there's a criminal intent, a bad  
2       purpose.

3                   And the other lawyers have gone over that, but  
4       when you look at the instructions, by golly, the  
5       instructions -- I don't need them, Thomas Lane doesn't need  
6       them, because he was never deliberately indifferent.  
7       There's no way he was.

8                   But you have to -- I've got a few of them here.  
9       It's a problem when you get a piece of paper and you start  
10      putting tabs on it. You got more tabs than the paper. So  
11      I'm finding it here.

12                  Bad purpose and improper motive. Bad purpose,  
13      improper motive. Did you see in the evidence of any bad  
14      purpose or improper motive of this guy, Thomas Lane? Think  
15      back for the last three weeks. Any -- one scintilla of  
16      evidence of that? Everything he did -- yes, sir. Should we  
17      roll him on his side? Should I go with you in the  
18      ambulance? Want me to do the chest compressions?

19                  Another -- the government relies -- it's  
20      unbelievable to me, I've been around a while, but it's  
21      unbelievable that the government stands up here and relies  
22      on the spectators, relies on them without them knowing  
23      anything about what they see then and yelling at these cops.  
24      The old man, elderly man who was there in the beginning,  
25      told George Floyd to go into the car.

1                   Getting back to the character of my client, he  
2                   got the community service award when he graduated, voted by  
3                   his other students, voted by the police that he was there  
4                   with. The mayor of Minneapolis, the police Chief Arradondo  
5                   shook his hand.

6                   Five months later, within hours, he terminated my  
7                   client. No investigation, nothing like this, where you  
8                   would see exactly what happened. He terminated him, a man  
9                   who worked for years trying to become a cop. Talk about  
10                  being ruled by the mob, politics. It's very dangerous now  
11                  to be a cop, very dangerous.

12                  I'm going to check my notes here. Oh, there's one  
13                  other thing that I -- unless I think of something else.  
14                  Mr. Paule talked to you about the presumption of innocence  
15                  and proof beyond a reasonable doubt and also about a jury  
16                  trial.

17                  But what I always wondered and what I thought  
18                  about over the years is: Why in the world would you have a  
19                  presumption of innocence? Every day out of your life you're  
20                  going to read the newspaper and you say, oh, they arrested  
21                  Mr. Jones, they got the man finally.

22                  All through your life when somebody is arrested,  
23                  you presume that they did the right thing, the government,  
24                  the prosecutors, the cops. Then all of a sudden you are put  
25                  in this jury room and you're told you can't do that. You

1 have to presume that they made a mistake, that the  
2 government made a mistake, our government. They make a lot  
3 of mistakes, as we learn through life, but the government  
4 made a mistake. You have to presume that.

5 And why -- and you cannot -- as the judge will  
6 tell you, that presumption is so strong that it can get you  
7 acquitted, that alone. And that presumption stays with you  
8 until and if the government proves each and every element in  
9 the case beyond a reasonable doubt, the type of proof that  
10 you would unhesitatingly act in the most important affairs  
11 of your life.

12 And don't doubt it for a second, ladies and  
13 gentlemen, this is the most important affair of my client's  
14 life, and it should be for you. It's the type of proof  
15 where ten years from now, when you are looking in the mirror  
16 and you think back on this, I did the right thing, I found  
17 him not guilty.

18 And that's your job. Your job is to judge the  
19 facts and apply the law and the Constitution. You are the  
20 enforcers of the Constitution. You're the unbiased, fair  
21 jury that looks at this case and decides it, and there could  
22 only be one decision in this case.

23 And then you ask, well, why do we have that?  
24 Well, when you look over on that side of the room, you will  
25 note four to ten prosecutors, who knows how many FBI agents.

1       Every person they need to do one thing. You know what that  
2       is? To convict my client and convict the others. That's  
3       their goal.

4                     Ladies and gentlemen, don't ever think that this  
5       is not an adversary proceeding. This is the government, the  
6       United States of America, against my client, Thomas Lane.  
7       And our forefathers, in law and authority, said, well, if  
8       that's the case, if the government does that, we're going to  
9       give the defendant the presumption of innocence and require  
10      our government to prove the case beyond a reasonable doubt.

11                  And why do they do it? Because of the power, the  
12      unending spending money, spending money of taxpayers. Just  
13      think of this case. And that's why we have those  
14      constitutional rights.

15                  One thing about -- a lot of this case went into  
16      training. And as I told you in my opening statement, we  
17      like that. Yeah, the training, sure. Because you know  
18      what? And I'm not going to try and repeat myself, but  
19      Thomas Lane followed training right to the T.

20                  And their argument -- and I'm going to sit down in  
21      a couple minutes, I promise, but their argument that,  
22      well -- and I think this is their argument on this timeline,  
23      that they found the pulse -- that Kueng found a pulse and --  
24      where is it here? Kueng can't find a wrist pulse at  
25      8:26:08.

1                   So right then, because Kueng took a wrist pulse,  
2 my client should have run up. How does he get Chauvin off?  
3 "Mr. Chauvin, would you please get off?" That ain't going  
4 to happen because these protesters are yelling at him. So  
5 what would a reasonable person do? You can't do any more  
6 than ask him to get off.

7                   And that's what the policy says. I brought it up  
8 a couple times. You've got to stay -- you've got to be in a  
9 safe area and you've got to do what a reasonable person  
10 would do.

11                  And a reasonable person, in this case Tom Lane,  
12 would request of him -- they know the ambulance is coming --  
13 check the pulse, when he couldn't get one. And it's not the  
14 carotid pulse because Chauvin's on that. And as soon as the  
15 paramedics arrive, my client went to work, told them about  
16 it, helped them, went in the ambulance.

17                  There is no, no, no medical indifference --  
18 deliberate indifference of his medical needs all through  
19 this. I don't need to talk about willfulness or specific  
20 intent, because the first element, deliberate indifference  
21 of his medical needs, was never proven.

22                  I thank you, ladies and gentlemen. It's been a  
23 pleasure sitting with you for the last month. I bet some  
24 days you wonder why you volunteered for this, but thank you  
25 very much.

1                   THE COURT: Thank you, Mr. Gray.

2                   MR. GRAY: Thank you, Your Honor.

3                   THE COURT: Members of the jury, we're going to  
4 take another recess at this time. Again, please keep an  
5 open mind and don't discuss the case during the recess.

6                   We are in recess for an afternoon break.

7                   (3:24 p.m.)

8                   **IN OPEN COURT**

9                   **(JURY NOT PRESENT)**

10                  THE COURT: Mr. Gray, I understand you'd requested  
11 that I stay on.

12                  MR. GRAY: I don't think I took over my time,  
13 30 minutes or 40. How many? And I know the other two  
14 lawyers, I don't think they did either. But the government  
15 took over two hours, as I recall it, and because of  
16 that and they said they were going to do an hour and a half  
17 yesterday, I believe, because of that, I request the court  
18 to order the government to limit their rebuttal to 10  
19 minutes or 15 --

20                  MS. BELL: Your Honor --

21                  MR. GRAY: -- because they already took a half  
22 hour more than --

23                  MS. BELL: -- we actually did not. We took an  
24 hour and 45 minutes. We had predicted an hour and a half  
25 for initial closing, and the closing was extended in part

1 because of a number of objections by defense counsel. I  
2 plan to be as brief as possible. I will --

3 THE COURT: Brief as possible I think should be  
4 15 minutes.

5 MS. BELL: I will endeavor to be done in  
6 15 minutes, and I apologize to Renee in advance.

7 THE COURT: Okay. Counsel, I have another factor  
8 that's involved. It's my understanding that our chief judge  
9 has ordered the closure of the courthouses at 3 o'clock this  
10 afternoon, and we are obviously past that.

11 First and foremost, as an elderly participant, I  
12 don't necessarily listen to the chief because I used to be  
13 one and I know that you don't necessarily have to pay  
14 attention to him.

15 But I am concerned about safety of people,  
16 obviously, and so I'm going to suggest that we take this  
17 break. We will have the government give their rebuttal, and  
18 at the conclusion of that we then do recess for the day and  
19 I will charge the jury first thing tomorrow morning. And  
20 hopefully everybody will be able to get home safe and sound.

21 With that, let's take a short recess and we'll  
22 come back in.

23 MR. PLUNKETT: Ten minutes, Your Honor?

24 THE COURT: Yeah, or something like that.

25 (Recess taken at 3:26 p.m.)

1

\* \* \* \* \*

2

(3:37 p.m.)

3

**IN OPEN COURT**

4

**(JURY PRESENT)**

5

THE COURT: Ms. Bell, proceed.

6

MS. BELL: Thank you, Your Honor.

7

8

9

All right, ladies and gentlemen. You get to hear from one last lawyer one last time, and it's me. I am going to talk to you about some things that I think don't matter.

10

11

MR. PLUNKETT: Objection. Improper assertion of the government's "I."

12

13

14

15

16

17

MS. BELL: Your job in the jury room is to decide what facts matter and what facts don't matter. I submit to you that there are facts in this case that you've heard about that actually don't matter to the ultimate question, but were relevant for information. I'll give you an example.

18

19

20

21

We heard that May 25th, 2020, was Memorial Day.

It doesn't matter to someone's constitutional rights if it's Memorial Day or Labor Day or Christmas. It's a fact, but it doesn't determine your decision. Okay.

22

23

24

25

And so there are other facts, other pieces of information that I submit to you when you think about the evidence in the case don't actually matter to the question of constitutional rights and what happened.

1                   The neighborhood doesn't matter. Your  
2 constitutional rights don't change if you get stopped  
3 driving through X neighborhood or Y neighborhood. Your  
4 rights are the same. The defense would have you believe  
5 that somehow your constitutional rights change depending on  
6 what neighborhood you are in.

7                   MR. PLUNKETT: Objection. Disparaging.

8                   MR. GRAY: Objection, Your Honor. There was never  
9 any argument about that.

10                  THE COURT: I don't know if that's true or not,  
11 but, anyway, it's rebuttal.

12                  Continue.

13                  MS. BELL: Look at the video. These are folks out  
14 walking. There's families walking by, people with kids on  
15 the street. People go into the store. It does not matter  
16 what neighborhood it was to the constitutional rights that  
17 apply or to the actions of these officers.

18                  It also doesn't matter that Mr. Thao never touched  
19 Mr. Floyd, because this is a crime of failing to do  
20 something.

21                  It also doesn't matter that Officer Thao had some  
22 experience with people saying, "I can't breathe" in the past  
23 and maybe they could breathe because, as Officer Thao  
24 admitted on cross-examination, as the defense expert said,  
25 you have to take that seriously. You have to. Someone's

1 life might depend on it.

2 And it also doesn't matter what happened before  
3 Mr. Floyd was pinned on the ground. There's been argument  
4 that Officer Thao wasn't there, the bystanders weren't  
5 there, except for Charles McMillian who, in fact, tried to  
6 help the police; and then when the police were not doing  
7 what they are constitutionally obligated to do, he told  
8 them, someone who had been there.

9 But here's why they didn't have to be there the  
10 whole time, because you know that force used has to be  
11 appropriate and proportional at the time. Someone who was  
12 violent earlier, if they stopped struggling, if they stop  
13 resisting, if they go unconscious, you cannot continue to  
14 use force. Period.

15 And I want to be clear. The government is not  
16 arguing that the officers shouldn't have investigated the  
17 forgery or shouldn't have tried to detain Mr. Floyd to  
18 figure out what was going on. No one is saying they  
19 shouldn't have put him in the squad car. No one is saying  
20 that Mr. Floyd wasn't refusing the officers' orders to get  
21 in the squad car.

22 What we are saying is that once he's on the ground  
23 and has stopped resisting, Officer Chauvin's force was  
24 unreasonable. As the defense expert said, obvious beyond  
25 question it was unreasonable. And once that force was

1           unreasonable, which defense expert said was while Mr. Floyd  
2           was still conscious, Officer Thao and Officer Kueng had a  
3           duty to stop it.

4                 The pills in the car also don't matter because  
5           they weren't in Mr. Floyd's bloodstream. They're  
6           information, but the doctors told you --

7                 MR. GRAY: Objection. Misstatement of the  
8           evidence that they weren't in the bloodstream.

9                 MS. BELL: Your Honor --

10                THE COURT: That's overruled.

11                MS. BELL: Pills found in the car cannot be in  
12           your body. The same with the six-pack on the seat that you  
13           drive back from the liquor store is not in your belly unless  
14           you drunk it. It's either got to be in the car or in you.  
15           That's it. It can only be one place or the other.

16                The carotid pulse. Oh, we've heard a lot about  
17           the carotid pulse and it's the gold standard. Sure. If you  
18           can't find a pulse, the answer cannot be "I did nothing."  
19           The answer cannot be, "Oh, well, I couldn't."

20                Mr. Lane [sic] just said Lane couldn't check the  
21           carotid. Not true. Mr. Lane could get up from where he was  
22           and walk over and check the carotid pulse. But if he  
23           couldn't get there, if he somehow thought he was going to be  
24           prevented from doing that, if he didn't think there was a  
25           pulse, he has to start CPR. Period. That's the

1 expectation. That's the reasonable measure that we have.

2 It is not reasonable not to do anything and excuse  
3 it by saying, "Well, I was down by the legs. I couldn't  
4 reach a carotid pulse. I was in the middle. I couldn't  
5 reach a carotid pulse. So I just didn't do anything." That  
6 is not a reasonable measure.

7 I submit to you, ladies and gentlemen, that the  
8 CPR in the ambulance ultimately also did not matter. As my  
9 grandpa used to say, a day late and a dollar short.

10 The CPR in the ambulance was done almost seven  
11 minutes after Lane asks the first time, "Should we roll him  
12 on his side," a time that Mr. Lane felt perfectly safe to  
13 roll Mr. Floyd onto his side, a time the defense expert  
14 agrees Mr. Floyd should have been placed on his side. That  
15 simple move would have saved Mr. Floyd's life, according to  
16 Dr. Systrom's testimony. Seven minutes is too late.

17 And so is six minutes, which is how much time it  
18 took from when Mr. Lane noticed that Mr. Floyd was going  
19 unconscious to when CPR was started in the ambulance. And  
20 so is five minutes, which is the second time that Officer  
21 Lane asked to roll him on his side.

22 Excuses like, "Well, Derek Smith didn't seem to be  
23 rushing" don't excuse the things you didn't do up until that  
24 point. You have a duty to provide medical aid.

25 MR. GRAY: Judge, I object to this as don't

1 excuse. Circumstantial evidence. They can look at  
2 Mr. Smith's conduct and circumstantial evidence with regard  
3 to my client.

4 MR. ROBERT PAULE: And, Your Honor, I'd object as  
5 disparaging in general, which is improper.

6 THE COURT: Okay. It's rebuttal, final.

7 Continue.

8 MS. BELL: And so, ladies and gentlemen, things  
9 that didn't -- that happened later don't excuse the earlier  
10 failures. They just don't.

11 And we heard a lot about excited delirium in this  
12 case. Excited delirium, another thing largely irrelevant.  
13 George Floyd wasn't suffering from excited delirium. Every  
14 single medical expert who got up here, who knew anything  
15 about it, said, "Nope, I don't think he was suffering from  
16 that." So it has nothing to do with his cause of death.

17 MR. ROBERT PAULE: I'd object as misstating the  
18 evidence, Your Honor.

19 THE COURT: That I sustain.

20 MS. BELL: Your Honor, Dr. Langenfeld --

21 THE COURT: That I sustained.

22 MS. BELL: I'll identify the folks.

23 Dr. Langenfeld, Dr. Baker, Dr. Bebarta, who is actually an  
24 expert in excited delirium, all said nope.

25 MR. ROBERT PAULE: Your Honor, I would object to

1           that. She's summarizing the evidence inaccurately.

2           THE COURT: I sustain, counsel.

3           MR. GRAY: Move it be stricken.

4           THE COURT: Stricken.

5           MS. BELL: Even if you believe officers thought  
6           Mr. Floyd was suffering from excited delirium, that doesn't  
7           change either the force they could use or the medical aid  
8           they needed to render. There is no question you cannot  
9           continue to use force on an unresisting person. Period.

10          MR. ROBERT PAULE: I'd object to that statement  
11         because the testimony is it depends on the facts  
12         and circumstances.

13          THE COURT: That's overruled. It's argument.

14          MS. BELL: The defense expert, Mr. Ijames, said  
15         that while Mr. Floyd was still conscious, the force became  
16         unreasonable. It doesn't matter if Mr. Floyd was suffering  
17         from a drug overdose, excited delirium or some other medical  
18         condition; the force was not appropriate. And the medical  
19         care is actually the same. Roll them on their side, whether  
20         it's an overdose, excited delirium or another medical  
21         condition.

22          The defendants have argued that they somehow  
23         thought they could ignore all the other training they had  
24         about a person's ABCs, airway, breathing, and circulation.  
25         By the way, the "C" stands for circulation, not carotid.

1                   MR. GRAY: Judge, Defendant Lane did not argue  
2 that. She should separate the defendants.

3                   MR. PLUNKETT: It's also disparaging.

4                   THE COURT: The jury will recall the evidence.

5                   Continue.

6                   MS. BELL: The training required them to roll  
7 Mr. Floyd on his side. If he was experiencing excited  
8 delirium and was handcuffed and under control, if he was  
9 unconscious, if he was having breathing problems, roll him  
10 on his side.

11                  And there's been talk about the role and  
12 sedation -- of sedation and excited delirium. Mr. Floyd did  
13 not need to be sedated. He was unconscious. He was not  
14 resisting. He was, according to Mr. Ijames, safe to roll on  
15 his side.

16                  I'm going to talk about willfulness a little bit.  
17 Willfulness is an element in both Count 1 and Count 2.  
18 Willfulness requires that you act with a bad purpose or  
19 improper motive to disobey or disregard the law.

20                  To prove willfulness the government has to show  
21 that the defendants knew what they were doing was wrong and  
22 they did it anyway. If you have kids, you probably  
23 understand what willfulness means. It's not complicated.  
24 They knew it was wrong.

25                  MR. ROBERT PAULE: Your Honor, I'd object to that

1 as misstating the law.

2 THE COURT: Overruled.

3 MS. BELL: They knew what they were doing was  
4 wrong and they did it anyway.

5 Each defendant took the stand and told you they  
6 knew they had a duty to intervene and they knew they had a  
7 duty to render medical aid. They knew from their training  
8 about those duties. They knew from their training that an  
9 officer hitting or punching a handcuffed person was not  
10 appropriate because that is obvious that that's wrong.

11 Well, ladies and gentlemen, the defense expert,  
12 Mr. Ijames, said that Officer Chauvin's force was  
13 unreasonable, it was obvious beyond question. They knew  
14 they had to intervene. The force was obvious beyond  
15 question, and they had opportunities and means to do so, and  
16 they didn't. That knowing what you're supposed to do,  
17 knowing what the law requires and disregarding that is  
18 willfulness.

19 You don't have to have a nefarious purpose, you  
20 don't have to intend the person is going to die, but you  
21 have to have a purpose that you know you're supposed to do  
22 this thing and you don't.

23 And with respect to the duty to intervene, Officer  
24 Thao and Officer Kueng ignored their duty. They made other  
25 choices. They disregarded the most basic training concepts.

1       And when we look at the concept of "In your custody and in  
2       your care," rendering medical aid, disregarded those  
3       concepts and didn't render medical aid.

4                  The defendants acted willfully. They knew what  
5       their training was, they knew what they were supposed to do,  
6       and they didn't do it.

7                  Your job during this trial is to decide what you  
8       believe. You can decide you believe all or some or none of  
9       what a witness says. You get to watch the videos, and you  
10      get to -- some of you, maybe your style is you're going to  
11      watch the videos and just look at for what Officer Thao,  
12      understand his perspective what he was doing.

13                MR. GRAY: Judge, I object to this as improper  
14       rebuttal.

15                THE COURT: It's overruled.

16                MS. BELL: You get to decide how you're going to  
17       approach that. Maybe you watch them and then you just watch  
18       what Officer Kueng did and figure out his perspective, what  
19       he could see and hear. But you decide, ladies and  
20       gentlemen, what these officers could see and hear and  
21       understand.

22                And I submit to you that when you see the video,  
23       things like, well, Officers Kueng and Lane couldn't see  
24       George Floyd's face, like the doctors testified to, we saw  
25       his face, we knew he was unconscious, they didn't need to

1 see his face. Listen to the video. Officer Lane said, "I  
2 think he's passing out." The crowd was yelling, "He's going  
3 unconscious." You decide what they heard, saw and observed.  
4 And as Dr. Systrom said, they had a front row seat to George  
5 Floyd.

6 We heard testimony that George Floyd was 6 feet  
7 and a few inches tall. Okay. If three officers in 6 feet,  
8 it's about 2 feet, 2 feet, 2 feet, if you divided it  
9 equally. Use your reason and common sense, ladies and  
10 gentlemen. What did these officers see? What could Officer  
11 Kueng see, shoulder to shoulder with Derek Chauvin? He  
12 could see his knee. I submit to you that when you review  
13 the videos -- look at the Milestone. It's actually a great  
14 view from behind. You can see the officers lined up.  
15 That's the one that's the city camera. You can see the  
16 officers lined up. You can see how close they are. You can  
17 see using your common sense exactly what they could see.

18 We've also heard about some talk about scene  
19 safety and sort of in two places. One, the scene itself was  
20 unsafe and then, number two, maybe George Floyd might spring  
21 to life and pose a safety risk. On that point, George Floyd  
22 was searched, handcuffed, on the ground with not one, not  
23 two, but three officers holding him down, and he had another  
24 one standing on the side. He stopped speaking. He went  
25 unconscious. He was no threat at all.

1                   As to scene safety, no one called for backup.

2                   MR. GRAY: Object. She's now -- that's improper  
3                   rebuttal. She's arguing her case again.

4                   THE COURT: I think you are, counsel. I sustain  
5                   that.

6                   MS. BELL: I'm arguing scene safety, which was  
7                   raised by all three defense counsel, actually.

8                   MR. GRAY: Going over the same facts.

9                   THE COURT: Yeah, I --

10                  MS. BELL: Your Honor.

11                  THE COURT: I think we are, counsel, and I  
12                  guess -- and I'm concerned on the time issue, as you all  
13                  know, so let's just move on.

14                  MS. BELL: All right. I'm --

15                  Every jury gets to decide how they deliberate, how  
16                  many times you look at evidence, what evidence you want to  
17                  look at once or twice or five times. It's entirely up to  
18                  you. Maybe you need extra speakers or extra copies of  
19                  certain exhibits. How you deliberate is up to you. I would  
20                  submit to you that the videos are important to watch.

21                  MR. GRAY: Object to that as repetitious. She's  
22                  talked about the videos for the last ten minutes, Your  
23                  Honor.

24                  THE COURT: I'll overrule. She can answer.

25                  MR. PLUNKETT: That's also invading the province,

1 Your Honor.

2 THE COURT: Again, it's overruled.

3 MS. BELL: The videos are sometimes hard to watch,  
4 I agree, but you have to watch them because they're the  
5 evidence in this case, as difficult as they might be.

6 So we've heard over and over that in your custody  
7 is in your care or, even more simply, if someone's in your  
8 custody, they're your baby. And although Mr. Floyd was a  
9 grown man, as he lay on the ground and handcuffed, pressed  
10 into the ground by these three men, he was in fact helpless  
11 as a baby to protect himself.

12 We know from the videos, from the testimony and  
13 from the common sense that all of these three defendants in  
14 this case, Officers Thao, Kueng and Lane, knew that George  
15 Floyd's life was at risk. They absolutely knew that they  
16 had the ability, the authority and the legal obligation to  
17 intervene. That's with respect to Thao.

18 MR. GRAY: Object to that, Your Honor. My client  
19 is not charged with intervening.

20 MS. BELL: I just made that clarification,  
21 Mr. Gray.

22 MR. GRAY: I didn't hear it.

23 MS. BELL: They all absolutely knew that they had  
24 the ability, the authority and the legal obligation to  
25 attend to Mr. Floyd's serious medical condition, as he lay

1           there unconscious, not responsive and otherwise helpless,  
2           and they weighed their risks.

3           Police officers have incredibly difficult jobs.  
4           They often see people on their worst day. And they have  
5           power to help people, to protect victims, to investigate  
6           crime, to take away the freedom of someone who commits a  
7           crime, but with that power comes responsibility. Because of  
8           that power, our Constitution requires that law enforcement  
9           officers do what they can to stop unlawful harming of  
10          someone in their custody and in their care, even if it's  
11          done by another law enforcement officer. They have the  
12          ability and the authority and the obligation to stop it.

13           There are no free passes to the Constitution  
14          because the risk as demonstrated in this case is too great.

15           MR. GRAY: Judge, I object to this. Improper  
16          rebuttal. I never argued there was a free pass. Totally  
17          improper.

18           THE COURT: No. It's summation.

19           Continue.

20           MS. BELL: There is no pass for "I was a brand-new  
21          officer." There is no pass for "It would have been hard or  
22          uncomfortable to speak up." There is no pass for "I was  
23          afraid I'd get in trouble." No pass even for "I thought I  
24          might lose my job."

25           Our Constitution weighed the risks and the

1 Constitution says you must act, you must take reasonable  
2 steps to stop the force, you must take reasonable steps to  
3 provide medical care. These defendants weighed those risks  
4 and chose not to act.

5 MR. ROBERT PAULE: I'd object to that as burden  
6 shifting, Your Honor.

7 THE COURT: It's summation. The burden does not  
8 shift.

9 MS. BELL: They chose not to take reasonable steps  
10 under the law. That is willfulness, knowing that what  
11 you're doing is wrong in violation of the law and doing it  
12 anyway.

13 MR. GRAY: I'd object. She said that three times  
14 now.

15 MS. BELL: That is the argument.

16 THE COURT: That is argument.

17 MS. BELL: All right. Sum up here. To paraphrase  
18 a quote, evil happens when good men do nothing. This  
19 happened in part because these three defendants did nothing.

20 MR. GRAY: Object to that.

21 MR. ROBERT PAULE: I'd object.

22 THE COURT: To that I sustain.

23 MR. ROBERT PAULE: I'd ask that that be -- the  
24 jury be instructed to disregard that argument, which is  
25 improper.

1 MS. BELL: This happened --

2 THE COURT: Well, we're going to complete the  
3 argument.

4 Continue, counsel.

5 MS. BELL: Thank you.

6 This happened because these defendants did not  
7 intervene, Thao and Kueng, and all three defendants did not  
8 render medical aid. They didn't have to intend to harm  
9 Mr. Floyd. They just had to know that they needed to take  
10 certain actions under the law and they failed to do so.

11 They weighed what they knew they were supposed to  
12 do, according to the law, against perhaps a difficult thing.  
13 They didn't do the right but difficult thing. This is now  
14 going to turn to your hands, where you are going to have to  
15 do the right but perhaps difficult thing.

16 Last, I want to say it wouldn't be surprising if  
17 you felt sympathy for one of the defendants. But as the  
18 judge will tell you, you cannot let sympathy influence you.  
19 You can feel bad someone was a rookie or you can wish that  
20 they made different choices, but it would not be okay. It  
21 would be a violation of your sworn duty as jurors to put  
22 your sympathy above the legal obligations of the law.

23 These defendants violated their obligations to  
24 act. The facts and the law establish that. You have an  
25 obligation to render a verdict based solely on the facts and

1                   the law without passion or prejudice, without sympathy, even  
2                   if it's hard, because that's what the Constitution requires.

3                   This was both a tragedy and a crime, and in this  
4                   case the only verdict that is supported by the facts and the  
5                   law is guilty on all counts for all defendants.

6                   THE COURT: Members of the jury, the lawyers know  
7                   this, but you didn't. Our chief judge has ordered a snow  
8                   emergency and that the courthouses be closed. Frankly, it  
9                   was ordered an hour ago at 3:00, but now it's 4:00.  
10                  Nevertheless, we're going to wait till tomorrow morning to  
11                  give the instructions of the court as to the law that's  
12                  applicable to the case.

13                  And, frankly, that's being done -- not that we  
14                  couldn't do it today, we could, but it's being done for the  
15                  safety of everybody involved in this matter. We have a  
16                  bunch of snow out there. I haven't got any idea how much,  
17                  but there has been a bunch of snow that's fallen today.

18                  And so I don't know anything about the road  
19                  conditions or anything else, but other people apparently do  
20                  because they are suggesting that the courthouses be closed,  
21                  and so I think that's what we need to do.

22                  Now, members of the jury, you've heard all the  
23                  evidence you are going to hear in the case. You've heard  
24                  the summations of the lawyers with respect to the case. You  
25                  still have not heard the instructions as to the law that's

1 applicable to the case.

2 So continue to keep an open mind with respect to  
3 the matter. And, with that, as you go into this evening,  
4 don't discuss the case among yourselves or others. Don't  
5 carry out any personal investigations. Don't read any media  
6 accounts or visit any internet factors and that kind of  
7 thing with respect to the case.

8 And, with all of that, we wish you a good evening.  
9 We will see you tomorrow morning.

10 Now, I'm going to change the time to start  
11 tomorrow morning. We're going to start at 9 o'clock. We'll  
12 start at 9:00 tomorrow. You will hear the court's  
13 instructions of the law, at the conclusion of which you will  
14 commence your deliberations with respect to the case.

15 With that, the jury is excused.

16 (4:03 p.m.)

17 **IN OPEN COURT**

18 **(JURY NOT PRESENT)**

19 THE COURT: Counsel, I stayed on for a minute. I  
20 don't think we want to do this tonight, but we need to find  
21 a time tomorrow to both inventory and make sure that we have  
22 appropriate exhibits ready to go to the jury.

23 I have, I think, maybe one or two differences that  
24 Renee and I might have with respect to the records that I've  
25 kept.

1                   But I have to tell you, Mr. Paule, that I've got  
2 difficulty with your exhibit list and what's submitted and  
3 what's not. That, to me, is the biggest challenge.

4                   Mr. Plunkett, Mr. Gray, I don't have any problems  
5 there.

6 MR. GRAY: I've only got two.

7 THE COURT: I can count to two, that's why.

8               Okay. Let's figure out when we're going to do it.  
9       We don't want to wait too long after they start  
10      deliberations to get it to them. So if it gets done  
11      earlier, great; if it doesn't, why, that's when we'll do it.

12 Okay. See you tomorrow.

13 MR. GRAY: Thank you, judge.

See you tomorrow.

18 (Court adjourned at 4:04 p.m., 02-22-2022.)

19 | \* \* \*

20 I, Renee A. Rogge, certify that the foregoing is a  
21 correct transcript from the record of proceedings in the  
22 above-entitled matter.